Supreme Court, U.S.
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No. 00-878

IN THE

Supreme Court of the United States

RICHARD L. MATHIAS, *et al.*

Petitioners,

v.

WORLDCOM TECHNOLOGIES, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

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TABLE OF CONTENTS
JOINT APPENDIX

Page

Appendix A – List of Relevant Docket Entries 1a

Appendix B – Excerpts From Interconnection Agreements (Illinois) 6a

1. Ameritech-MFS Intelenet of Illinois, Inc. 6a
2. Ameritech-Focal Communications Corp. 12a
3. Ameritech-Teleport Communications Group (TCG) 18a
4. Ameritech- AT&T Communications of Illinois, Inc. 23a
5. Ameritech-MCImetro Access Transmission Services, Inc. 31a

Appendix C – Excerpts From Interconnection Agreements (Other States) 39a

1. AT&T- US West (Washington) 39a
2. GTE-AT&T (Iowa) 40a
3. Ameritech-AT&T (Indiana) 43a
4. Ameritech-AT&T (Michigan) 46a
5. Ameritech-AT&T (Ohio) 48a
6. Ameritech-AT&T (Wisconsin) 50a

Appendix D – Complaints Filed with the Illinois Commerce Commission 52a

1. Complaint filed by Teleport Communications Group 52a

2. Complaint filed by WorldCom Technologies, Inc 77a

3. Complaint filed by MCI Telecommunications Corp 90a

Appendix E – Order, Illinois Commerce Commission, March 11, 1998 ..... 96a

Appendix F – Complaint No. 98 C 1925, filed in United States District Court for the Northern District of Illinois, March 27, 1998 ..... 125a

Appendix G – Opinion of the District Court, July 21, 1998 ..... 147a

Appendix H – Entry of Judgment by the District Court, August 4, 1998 ..... 181a

APPENDIX A - LIST OF RELEVANT DOCKET ENTRIES

Date	Event
	Illinois Commerce Commission
September 8, 1997	Complaint of Teleport Communications Group, Inc. filed with Illinois Commerce Commission (JA 52a).
October 9, 1997	WorldCom Technologies, Inc. complaint filed with Illinois Commerce Commission (JA 77a).
October 10, 1997	MCI Telecommunications Corp. and MCImetro Access Transmission Services, Inc., complaint filed with Illinois Commerce Commission (JA 90a).
October 17, 1997	Petition to Intervene filed by Focal Communications Corp.
November 3, 1997	Petition to Intervene filed by AT&T Communications of Illinois, Inc.

November 4, 1997	Three complaints consolidated by Illinois Commerce Commission Hearing Examiner.
November 21, 1997	Evidentiary hearing held.
March 11, 1998	Order of Illinois Commerce Commission issued (JA 96a).

United States District Court, Northern District of Illinois, and Illinois Appellate Court, Third District

March 27, 1998	Complaint No. 98 C 1925 filed by Ameritech Illinois, Inc. in United States District Court for the Northern District of Illinois, Eastern Division (JA 125a).
May 1, 1998	District court issues stay of order of Illinois Commerce Commission.
May 14, 1998	Petition for Review of the Order of the Illinois Commerce Commission filed by Illinois Bell Telephone Company (Ameritech Illinois), Illinois Appellate Court, Third District.
May 18, 1998	Commissioners of the Illinois Commerce Commission file

	first Motion to Dismiss Complaint (subject matter jurisdiction/11th Amendment).
May 20, 1998	Commissioners of the Illinois Commerce Commission file second Motion to Dismiss Complaint (collateral estoppel/*res judicata*/abstention).
May 20, 1998	District court orders that it will rule on jurisdictional issues separately from the merits of the complaint, without prejudice to defendant Commissioners' position regarding jurisdiction.
June 19, 1998	Illinois Appellate Court, Third District, grants motion of Ameritech Illinois for stay of all proceedings pending resolution of all issues in dispute in United States District Court case.
July 21, 1998	District court opinion and order ruling on the merits (JA 147a).
August 4, 1998	District court entry of final judgment as to all defendants

except "the Illinois Commerce Commission." (JA 181a)

August 25, 1998 — District court opinion and order denying Commissioners' motions to dismiss (Pet. App. 23a-35a).

United States Court of Appeals for the Seventh Circuit

May 10, 1999 — Oral Argument on consolidated appeals, United States Court of Appeals for the Seventh Circuit.

June 18, 1999 — Opinion of the United States Court of Appeals for the Seventh Circuit (Pet. App. 6a-22a)

August 19, 1999 — Order of the United States Court of Appeals for the Seventh Circuit holding petitions for rehearing in abeyance pending decision on rehearing in *MCI Telecommunications Corp. v. Illinois Commerce Commission*, No. 98-2127, and amending opinion of June 18, 1999 (Pet. App. 3a-5a).

August 9, 2000 — Order of the United States Court of Appeals for the Seventh Circuit denying petitions for rehearing (Pet. App. 1a-2a)

APPENDIX B - EXCERPTS FROM INTERCONNECTION AGREEMENTS (ILLINOIS)

1. Ameritech-MFS Intelenet of Illinois, Inc.

AMENDED AND RESTATED INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

Dated as of April 8th 1997

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech services, Inc. on behalf of Ameritech Illinois and MFS INTELENET OF ILLINOIS, INC.

* * * * * * * * *

AMENDED AND RESTATED INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This amended and Restated Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Agreement"), is effective as of the ___ day of April 1997, by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc., a Delaware Corporation with offices at 350 N. Orleans, Third Floor, Chicago, Illinois 60654, on behalf of Ameritech Illinois ("Ameritech") and MFS Intelenet of Illinois, Inc., ("MFS") a

Delaware corporation with offices at 1 Tower Lane, 27th Floor, Oakbrook Terrace, Illinois 60181.

WHEREAS. the Parties want to interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services (as defined below) and Exchange Access (as defined below) to their respective Customers.

WHEREAS. the Parties entered into an Interconnection Agreement dated as of May 17, 1996 (the "Effective Date") (the "Existing Interconnection Agreement") that set forth the respective obligations of the Parties and the terms and conditions under which the Parties interconnected their networks and provided other services as required by the Act (as defined below) and additional services as set forth in such Existing Interconnection Agreement.

WHEREAS. MFS has exercised its rights under Section 28.14 of the Existing Interconnection Agreement and Section 252(i) of the Act to incorporate the terms and conditions of an Other Agreement (as defined in the Existing Interconnection Agreement) as provided in Section 28.14 of the Existing Interconnection Agreement, and the Parties are entering into this Amended and Restated Interconnection Agreement to reflect such terms and conditions of such Other Agreement and certain other amendments mutually agreed upon by the Parties.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MFS and Ameritech hereby agree as follows:

* * * * * * * *

1.0 Definitions

* * * * * * * *

1.5 "As Defined in the Act" means as specifically defined by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

1.6 "As Described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

* * * * * * * *

1.38 "Local Traffic" means a call which is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the terminating NXX, or as otherwise determined by the FCC or Commission for purposes of Reciprocal Compensation; provided, that in no event shall a Local Traffic call be more than fifteen (15) miles as so calculated.

* * * * * * * *

1.51 "Reciprocal Compensation" is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Telecommunications originating on one Party's network and terminating on the other Party's network.

* * * * * * * *

2.0 INTERPRETATION AND CONSTRUCTION.

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms defined in Schedule 1.0 are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Ameritech or other third party offerings, guides or practices), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

* * * * * * * *

5.8 Reciprocal Compensation Arrangements - Section 251(b)(5)

5.8.1 Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or MFS which a Telephone Exchange Service Customer originates on Ameritech's or MFS' network for termination on the other Party's network.

5.8.2 The Parties shall compensate each other for transport and termination of Local Traffic at the rates provided int eh Pricing Schedule.

5.8.3 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All

Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

5.8.4 Each Party shall charge the other Party its effective tariffed intraLATA FGD Switched access rates for the transport and termination of all IntraLATA Toll Traffic.

5.8.5 Compensation for transport and termination of all traffic which has been subject to performance of INP by one Party for the other Party pursuant to Section 13.0 shall be as specified in Section 13.5.

* * * * * * * * *

6.3 Meet-Point Billing Arrangements

Meet-Point Billing arrangements between the Parties for jointly-provided Switched Exchange access Services on Access Toll Connecting Trunks will be governed by the terms and conditions of the Agreement for Switched Access Meet Point Billing and shall be billed at each Party's applicable switched access rates.

* * * * * * * * *

28.7 Governing Law

For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues

within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Illinois without reference to conflict of law provisions.

* * * * * * * * *

28.11.3 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 28.11.2, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission may direct release of any or all funds (including any accrued interest) in the escrow account, plus applicable late fees, to be paid to either Party.

2. Ameritech-Focal Communications Corp.

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

Dated as of October 28th 1996

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech Services, Inc. on behalf of Ameritech Illinois

and

FOCAL COMMUNICATIONS CORPORATION

* * * * * * * * *

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Agreement"), is effective as of the 28th day of October, 1996 (the "Effective Date"), by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc., a Delaware Corporation with offices at 350 N. Orleans, Third Floor, Chicago, Illinois 60654, on behalf of Ameritech Illinois ("Ameritech") and Focal Communications Corporation, a Delaware Corporation with offices at 300 West Washington Street, Suite 1408, Chicago, Illinois 60606 ("Focal").

WHEREAS, the Parties want to Interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services (as defined below) and Exchange Access (as defined below) to their respective business and residential Customers.

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Act (as defined below) and additional services as set forth herein.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Focal and Ameritech hereby agree as follows:

* * * * * * * * *

1.5 "As Defined in the Act" means as specifically defined by the Act and as from time to time interpreted in the duly authorized rules, regulations and orders of the FCC or the Commission.

1.6 "As Described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

* * * * * * * * *

1.46 "Local Traffic" means a call of which the distance is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the Terminating NXX, or as otherwise determined by the FCC or the commission for purposes of Reciprocal Compensation.

* * * * * * * * *

1.60 "Reciprocal Compensation" is As Described in the Act.

* * * * * * * * *

2.0 INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Ameritech or other third party offerings, guides or practices), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

* * * * * * * * *

5.8 Reciprocal Compensation Arrangements - Section 251(b)(5).

5.8.1 Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech for Focal which a Telephone Exchange Service Customer originates on Ameritech's or Focal's network for termination on the other Party's network. The Parties shall compensate each other for such transport and termination of Local Traffic at the rate provided in the Pricing Schedule.

5.8.2 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

5.8.3 Each Party shall charge the other Party its effective applicable Federal and State tariffed intraLATA FGD switched access rates for the transport and termination of all IntraLATA Toll Traffic.

5.8.4 Compensation for transport and termination of all traffic which has been subject to performance of INP by one Party for the other Party pursuant to Section 13.0 shall be as specified in Section 13.5.

* * * * * * * * *

6.3 Meet-Point Billing Arrangements

Meet-Point Billing arrangements between the Parties for jointly-provided Switched Exchange Access Services on Access Toll Connecting Trunks will be governed by the terms and conditions of the Agreement for Switched Access Meet Point Billing and shall be billed at each Party's applicable switched access rates.

* * * * * * * * *

29.7 Governing Law

For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Illinois without reference to conflict of law provisions.

* * * * * * * * *

29.11.3 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 29.11.2, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission may direct or the FCC may direct release of any or all

funds (including any accrued interest) in the escrow account, plus applicable late fees, to be paid to either Party.

3. Ameritech-Teleport Communications Group (TCG)

INTERCONNECTION AGREEMENT UNDER SECTION 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

Dated as of January 7, 1997

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech Services, Inc. on behalf of Ameritech Illinois

and

TCG ILLINOIS and TCG CHICAGO

* * * * * * * * *

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Agreement"), is effective as of the 20th day of January, 1997 (the "Effective Date"), by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc., a Delaware Corporation with offices at 350 N. Orleans, Third Floor, Chicago, Illinois 60654, on behalf of and as agent for Ameritech Illinois ("Ameritech") and TCG Illinois and TCG Chicago, New York general partnerships with offices at 1 Teleport Drive, Staten Island, New York 10311 (collectively "TCG").

WHEREAS, the Parties want to interconnect their networks pursuant to this Agreement to provide Telephone Exchange Services (as defined below) and Exchange Access (as defined below) to their respective business and residential Customers.

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Act (as defined below) and additional services as set forth herein.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TCG and Ameritech hereby agree as follows:

* * * * * * * * *

1.4 "As Defined in the Act" means as specifically defined by the Act and as from time to time interpreted in the duly authorized rules, regulations and orders of the FCC or the Commission.

1.5 "As Described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules, regulations and orders of the FCC or the Commission.

* * * * * * * *

1.43 "Local Traffic" means local service area calls as defined by the Commission.

* * * * * * * * *

1.59 "Reciprocal Compensation" is As Described in the Act.

* * * * * * * *

2.0 INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including Ameritech or other third party offerings, guides or practices), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision). In the event of a conflict or discrepancy between the provisions of this Agreement and the Act, the provisions of the Act shall govern.

* * * * * * * *

5.6 Reciprocal Compensation Arrangements Section 251(b)(5)

5.6.1 Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech of TCG with a Telephone Exchange Service Customer originates on Ameritech's or TCG's network for termination on the other Party's network. The Parties shall compensate each other for such transport

and termination of Local Traffic at the rate provided in the Pricing Schedule.

56.2 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

5.6.3 Each Party shall charge the other Party its effective and tariffed applicable federal and state intraLATA FGD switched access rates for the transport and termination of all intraLATA Toll Traffic.

5.6.4 Compensation for transport and termination of all traffic which has been subject to performance of INP by one party for the other Party pursuant to Section 13.0 shall be as specified in Section 13.7.

* * * * * * * *

6.3 Meet-Point Billing Arrangements

Meet-Point Billing arrangements between the Parties for jointly-provided Switched Exchange Access Services on Access Toll Connecting Trunks will be governed by the terms and conditions of the Agreement For Switched Access Meet Point Billing and shall be billed at each Party's applicable switched access rates.

* * * * * * * *

29.6 Governing Law

This Agreement shall be governed by the applicable federal law and by the domestic laws of the State of Illinois without reference to conflict of law provisions.

* * * * * * * * *

29.10.3 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 29.10.2, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission or the FCC may direct release of any or all funds (including any accrued interest) in the escrow account, plus applicable late fees, to be paid to either Party.

4. Ameritech-AT&T Communications of Illinois, Inc.

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THETELECOMMUNICATIONS ACT OF 1996

Dated as of January 14, 1997

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech Services, Inc. on behalf of and as agent for Ameritech Illinois

and

AT&T COMMUNICATIONS OF ILLINOIS, INC.

* * * * * * * * *

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Agreement"), is effective as of the 14th day of January, 1997 (the "Effective Date"), by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc., a Delaware Corporation with offices at 350 N. Orleans, Third Floor, Chicago, Illinois 60654, on behalf of and as agent for Ameritech Illinois (Ameritech Illinois referred to herein as "Ameritech") and AT&T Communications of Illinois, Inc., an Illinois Corporation with offices at 227 West Monroe Street, 13th Floor, Chicago, Illinois 60606 ("AT&T")

RECITALS

A. Ameritech is an Incumbent Local Exchange Carrier as defined by the Act, authorized to provide certain Telecommunications Services within Illinois.

B. Ameritech is engaged in the business of providing, among other things, local Telephone Exchange Service within Illinois.

C. AT&T has been granted authority to provide certain local Telephone Exchange Services within Illinois and is a Local Exchange Carrier as defined by the Act.

D. The Parties desire to interconnect their telecommunications networks and facilities to comply with the Act, and exchange traffic so that their respective residential and business Customers may communicate with each other over, between and through such networks and facilities.

E. The Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will Interconnect their networks and facilities and provide to each other Telecommunications Services as required by the Act as set forth herein.

NOW, THEREFORE, in consideration of the mutual premises and the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AT&T and Ameritech hereby agree as follows:

* * * * * * * * *

1.3 Interpretation

* * * * * * * * *

(c) The headings of the Articles, Sections, Exhibits and Schedules are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

* * * * * * * * *

4.7 Reciprocal Compensation Arrangements Section 251(b)(5)

4.7.1 Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or AT&T which a Telephone Exchange Service Customer originates on Ameritech's or AT&T's network for termination on the other Party's network. The Parties shall compensate each other for such transport and termination of Local Traffic at the rate provided at Item II of the Pricing Schedule.

4.7.2 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

4.7.3 Each Party shall charge the other Party its effective applicable federal and state tariffed intraLATA FGD switched access rates for the transport and termination of all IntraLaTA Toll Traffic.

4.7.4 Compensation for transport and termination of all traffic which has been subject to performance of INP by one

Party for the other Party pursuant to Article XIII shall be as specified in Section 13.7.

* * * * * * * *

6.1 Meet-Point Billing Services

6.1.1 Pursuant to the procedures described in Multiple Exchange Carrier Access Billing ("MECAB") document SR-BDS-000983, issue 5, June 1994, the Parties shall provide to each other the Switched Access Detail Usage Data and the Switched Access Summary Usage Data to bill for jointly provided switched access service such as switched access Feature Groups B and D. The Parties agree to provide this data to each other at no charge. If the procedures in the MECAB document are amended or modified, the Parties shall implement such amended or modified procedures within a reasonable period of time.

6.1.2 AT&T shall designate access Tandems or any other reasonable facilities or points of Interconnection for the purpose of originating or terminating IXC Traffic. For each such access Tandem designated, the Parties shall mutually agree upon a billing percentage as set forth in Schedule 6.1 and shall further agree, within thirty (30) days of the Effective Date, upon billing percentages for additional routes, which billing percentages shall be set forth in Schedule 6.1 as amendments hereto. Either party may make this billing percentage information available to IXCs. The billing percentages shall be calculated according to one of the methodologies specified for such purposes in the MECAB document.

6.1.3 The Parties shall undertake all reasonable measures to ensure that the billing percentage and associated information are maintained in their respective federal and state access tariffs, as required, until such time as such information can be included in the National Exchange association ("NECA") FCC Tariff No. 4. AT&T shall use its best efforts to include in such tariff the billing percentage and associated information as a non-member of NECA.

6.1.4 Each Party shall implement the "Multiple Bill/Single Tariff" option in order to bill the IXC for each Party's own portion of jointly provided Telecommunications Service.

* * * * * * * *

26.6 Remedies

Except as expressly provided herein, no remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise.

* * * * * * * *

28.2.4 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 28.3, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission or the FCC may direct payment of any or Disputed Amounts (including any accrued interest) thereon or additional amounts awarded plus applicable late fees, to be paid to either Party.

* * * * * * * *

28.3 Dispute Escalation and Resolution

Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a "Dispute") arising under this Agreement shall be resolved in accordance with the procedures set forth in this Section 28.3. In the event of a Dispute between the parties relating to this Agreement and upon the written request of either Party, each of the Parties shall appoint a designated representative who has authority to settle the Dispute and who is at a high level or management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonable deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve issue related to a Dispute within thirty (30) days after the Parties' appointment of designated representatives as set forth above, the parties shall attempt in good faith to address any default or resolve any Dispute according to the rules, guidelines or regulations of the Commission. Notwithstanding the foregoing, in no event shall the parties permit the pending of a Dispute to disrupt service to any AT&T Customer or Ameritech Customer.

28.4 Equitable Relief

Notwithstanding the foregoing, this **Article XXVIII** shall not be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders, if, in its judgment, such action is necessary to avoid irreparable harm. Despite any such action, the Parties will continue to participate in good faith in the dispute resolution procedures described in this **Article XXVIII**.

* * * * * * * *

30.6 Governing Law

For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Illinois without reference to conflict of law provisions; provided, however, that the Parties shall consult with each other and attempt to agree on a common state law to govern an issue that affects each of the Regional Interconnection Agreements and such issue is not particular to a specific State's law.

* * * * * * * *

SCHEDULE 1.2

DEFINITIONS

* * * * * * * *

"As Defined in the Act" means as specifically defined by the Act and s form time to time interpreted in the duly

authorized rules and regulations of the FCC or the Commission.

"As Described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

* * * * * * * *

"Local Traffic" means a call the distance of which is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the terminating NXX or as otherwise determined by the FCC or Commission for purposes of Reciprocal Compensation; provided, that in no event shall a Local Traffic call be greater than fifteen (15) miles as so calculated.

* * * * * * * *

"Reciprocal Compensation" is As Described in the Act.

5. Ameritech-MCImetro Access Transmission Services, Inc.

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

Dated as of May ___, 1997

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech Services, Inc. on behalf of and as an agent for Ameritech Illinois

and

MCIMETRO ACCESS TRANSMISSION SERVICES, INC.

* * * * * * * *

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement, under Sections 251 and 252 of the Telecommunications Act of 1996 ("**Agreement**"), is effective as of the ____ day of May 1997 (the "**Effective Date**"), by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc., a Delaware corporation with offices at 350 North Orleans, Third Floor, Chicago, Illinois 60654, on behalf of and as agent for Ameritech Illinois ("**Ameritech**"), and MCImetro Access Transmission Service, Inc., a Delaware corporation, with offices at 8521 Leesburg Pike, Vienna, Virginia 22182 ("**MCIm**").

RECITALS

A. Ameritech is an Incumbent Local Exchange Carrier, as defined by the Act, authorized to provide certain Telecommunications Services within Illinois.

B. Ameritech is engaged in the business of providing, among other things, local Telephone Exchange Service within Illinois.

C. MCIm has been granted authority to provide certain local Telephone Exchange Services within Illinois and is Local Exchange Carrier as defined by the Act.

D. The Parties desire to provide for compliance with their respective obligations under Section 251(a), (b), (c) and (e) of the Act, including Interconnection of their facilities and equipment, so that their respective residential and business Customers may communicate with each other over, between and through such networks and facilities.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCIm and Ameritech hereby agree as follows:

* * * * * * * *

1.3 Interpretation

* * * * * * * *

(c) The headings of the Articles, Sections, Exhibits and Schedules are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

* * * * * * * *

4.7 Reciprocal Compensation Arrangements - Section 251(b)(5)

Compensation for the transport and termination of Local Traffic and IntraLATA Toll Traffic shall be pursuant to this **Section 4.7**. Compensation for the transport and termination of any Exchange Access Traffic shall be pursuant to **Article VI**.

4.7.1 Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or MCIm that a Telephone Exchange Service Customer originates on Ameritech's or MCIm's network for termination on the other Party's network. The Parties shall compensate each other for such transport and termination of Local Traffic at the rates provided at Item II of the Pricing Schedule; provided that when Ameritech terminates Local Traffic to MCIm, Ameritech shall only be required to pay MCIm the rate for End Office Local Termination.

4.7.2 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

4.7.3 Each Party shall charge the Other Party its effective applicable federal- and state-tariffed IntraLATA FGD-switched access rates for the transport and termination of all IntraLATA Toll Traffic.

4.7.4 Compensation for transport and termination of all traffic that has been subject to performance of INP by one Party for the other Party pursuant to **Article XIII** shall be specified in **Section 13.8**.

* * * * * * * * *

6.1 Meet-Point Billing Services

6.1.1 Pursuant to the procedures described in Multiple Exchange Carrier Access Billing ("**MECAB**") documents SR-BDS-000983, issue 5, June 1994, the Parties shall provide to each other the Switched Access Detail Usage Data and the Switched Access Summary Usage Data bill for jointly provided switched access service, such as switched access service, such as switched access Feature Groups B and D. The Parties agree to provide this data to each other at no charge. If the procedures in the MECAB documents are amended or modified, the Parties shall implement such amended or modified procedures within a reasonable period of time. The billing procedures set forth in this **Article VI** shall remain in effect until such time as both Parties mutually agree in writing to a billing arrangement to supersede Meet-Point Billing.

6.1.2 MCIm shall designate access Tandems or any other reasonable facilities or points of Interconnection for the purpose of originating or terminating IXC traffic. For each such access Tandem designated, the Parties shall mutually

agree upon a billing percentage as set forth in **Schedule 6.0** and shall further agree, within thirty (30) days of the Effective Date, upon billing percentages for additional routes, which billing percentages shall be set forth in **Schedule 6.0** as amendments hereto. Either Party may make this billing percentage information available to IXCs. The billing percentages shall be calculated according to one of the methodologies specified for such purposes in the MECAB document.

6.1.3 The Parties shall undertake all reasonable measures to ensure that the billing percentage and associated information are maintained in their respective federal and state access tariffs, as required, until such time as such information can be included in the National Exchange Association ("**NECA**") FCC Tariff No. 4. MCIm shall use its best efforts to include in such tariff the billing percentage and associated information as a non-member of NECA.

6.1.4 Each Party shall implement the "Multiple Bill/Single Tariff" option in order to bill the IXC for each Party's own portion of jointly provided Telecommunications Service.

* * * * * * * * *

26.6 Remedies

Except as provided in Section 10.9.5, no remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter exiting under applicable law or otherwise.

* * * * * * * * *

28.1.4 If the Parties are unable to resolve issues related to ~~the~~ Disputed Amount within forty-five (45) days after the Parties' appointment of designated representatives pursuant to **Section 28.3**, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission or the FCC may direct payment of any or all Disputed Amounts (including any accrued interest thereon or additional amounts awarded, plus applicable late fees, to be paid to either Party.

* * * * * * * *

28.3 Dispute Escalation and Resolution

Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a "**Dispute**") arising under this Agreement shall be resolved in accordance with the procedures set forth in this **Section 28.3**. In the event of a Dispute between the Parties relating to this Agreement and upon the written request of either Party, each of the Parties shall appoint a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Part to the other Party shall be honored. If the Parties are unable to resolve issues related to a Dispute within thirty (30) days after the Parties' appointment of designated representatives as set

forth above, the Parties shall attempt in good faith to address any default or resolve any Dispute according to the rules, guidelines or regulation of the Commission; provided, however, a Party may pursue all available remedies in the event there is no satisfactory resolution pursuant to this **Section 28.3**. Notwithstanding the foregoing, in no event shall the Parties permit the pending of a Dispute to disrupt service to any MCIm Customer or Ameritech Customer.

* * * * * * * *

30.6 Governing Law

This Agreement shall be governed by and construed in accordance with the Act, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of the State of Illinois shall govern, without reference to its conflict of law provisions.

* * * * * * * *

SCHEDULE 1.2

DEFINITIONS

* * * * * * * *

"As Defined in the Act" means as specifically defined by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

"As Described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulation of the FCC or the Commission.

* * * * * * * *

"Local Traffic" means a call the distance of which is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the terminating NXX or as otherwise determined by the FCC or Commission for purposes of Reciprocal Compensation; provided, that in no event shall costs, claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).

* * * * * * * *

"Reciprocal Compensation" is As Described in the Act.

APPENDIX C - EXCERPTS FROM INTERCONNECTION AGREEMENTS (OTHER STATES)

1. AT&T-U S West (Washington)

AGREEMENT FOR LOCAL WIRELINE NETWORK INTERCONNECTIO AND SERVICE RESALE BETWEEN AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AND U S WEST COMMUNICATIONS, INC.

- FILED JULY 25, 1997 -

* * * * * * * *

21. GOVERNING LAW

21.1 This Agreement shall be governed by and construed in accordance with the Act and FCC or Commission rules and regulations, except insofar as state law may control any aspect of this Agreement, in which case the domestic laws of the State of Washington, without regard to its conflicts of laws principles, shall govern.

2. GTE-AT&T (Iowa)

INTERCONNECTION, SERVICES AND NETWORK ELEMENTS BETWEEN GTE CORPORATION AND AT&T CORP.

* * * * * * * *

23.9 Governing Law - The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of Iowa in which the services are provided and shall be subject to the exclusive jurisdiction of the courts therein, except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect. The Parties submit to personal jurisdiction in Irving, Texas and Basking Ridge, New Jersey, and waive any and all objectives to Texas or New Jersey venue.

* * * * *

ATTACHMENT 1

DISPUTE RESOLUTION

* * * * * * * *

1. Purpose

1.1 This Attachment 1 is intended to provide for the expeditious, economical, and equitable resolution of disputes between GTE and AT&T arising under this agreement, and to do so in a manner that permit uninterrupted, high quality services to be furnished to each Party's customers.

2. Remedies

2.1 Either party to this Agreement may invoke the informal and formal complaint procedures of the Iowa Utilities Board at any time.

2.1.1 By mutual agreement, the parties may refer a dispute to negotiation and arbitration under the procedures provided herein. GTE and AT&T agree not to resort to any court, agency, or private group with respect to such disputes except in accordance with this Attachment.

* * * * * * * *

2.1.4 Nothing in this Attachment 1 shall limit the right of either GTE or AT&T to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this attachment 1. However, once a decision is reached by the Arbitrator,

such decision shall supercede any provisional remedy.

3. Informal Resolution of Disputes

3.1 Prior to initiating an arbitration pursuant to the American Arbitration Association ("AAG") rules, as described below, the Parties to this Agreement shall submit any dispute between GTE and AT&T for resolution to an Inter-company Review Board consisting of one representative from AT&T at the Director-or above level and one representative from GTE at the Vice-President-or-above level (or at such lower level as each Party may designate). The dispute will be submitted by either Party giving written notice to the other Party, consistent with the notice requirements of this Agreement, that the Party intends to initiate the Informal Resolution of Disputes process. The notice shall define the dispute to be resolved. The Parties may use a mediator to help informally settle a dispute.

* * * * * * * * *

3.2 The Parties may enter into a settlement of any dispute at any time. The Settlement Agreement shall be in writing, and shall identify how the Arbitrator's or mediator's fee for the particular proceeding, if any, will be apportioned.

3. Ameritech-AT&T (Indiana)

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

Dated as of February 25, 1997

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech Services Inc. on behalf of and as agent for Ameritech Indiana

and

AT&T COMMUNICATIONS OF INDIANA, INC.

* * * * * * * * *

* * * * * * * * *

28.2.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

* * * * * * * * *

28.3.2 Except for matters for which the Act specifies a procedure for resolving disputes or differences, disputes between AT&T and Ameritech that arise out of this Agreement and are not resolved by informal negotiation or consultation shall be resolved as described in Schedule 28.3.2 which sets forth procedures that are intended to enable the Parties to resolve any disputes in an expeditious manner, without resort to courts. The Parties agree that any Dispute that also arises under one or more of the Regional Agreements will be consolidated into one arbitration proceeding.

* * * * * * * * *

28.4 Equitable Relief. Notwithstanding the foregoing, this Article XXVIII shall not be construed to prevent either Party from seeking and obtaining temporary equitable remedies, including temporary restraining orders, if, in its judgment, such action is necessary to avoid irreparable harm. Despite any such action, the Parties will continue to participate in good faith in the dispute resolution procedures described in this Article XXVIII.

* * * * * * * * *

30.6 Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Indiana without reference to conflict of law provisions; provided, however, that the Parties shall consult with each other and attempt to agree on a common state law to govern an issue that affects each of the Regional Interconnection Agreements and such issue is not particular to a specific State's law.

4. Ameritech-AT&T (Michigan)

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech Services, Inc. on behalf of and as agent for Ameritech Michigan

and

AT&T COMMUNICATIONS OF MICHIGAN, INC.

* * * * * * * *

28.2.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

* * * * * * * *

30.6 Governing Law For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Michigan without reference to conflict of law provisions; provided, however, that the Parties shall consult with each other and attempt to agree on a common state law to govern an issue that affects each of the Regional Interconnection Agreements and such issue is not particular to a specific State's law.

5. **Ameritech-AT&T (Ohio)**

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

Dated as of January ___, 1997

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech Services, Inc. on behalf and as agent of Ameritech Ohio

and

AT&T COMMUNICATIONS OF OHIO, INC.

* * * * * * * *

28.2.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

* * * * * * * *

30.6 Governing Law For all claims under this Agreement that are based upon issues within the jurisdiction of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Ohio without reference to conflict of law provisions; provided, however, that the Parties shall consult with each other and attempt to agree on a common state law to govern an issue that affects each of the Regional Interconnection Agreements and such issue is not particular to a specific State's law.

6. Ameritech-AT&T (Wisconsin)

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

Dated as of January 15, 1997

By and Between

AMERITECH INFORMATION INDUSTRY SERVICES, a division of Ameritech Services, Inc. on behalf of and as agent for Ameritech Wisconsin

and

AT&T COMMUNICATIONS OF WISCONSIN, INC.

* * * * * * * * *

28.2.3 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Dispute and negotiate in good faith in an effort to resolve such Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

* * * * * * * * *

30.6 Governing Law For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of Wisconsin without reference to conflict of law provisions; provided, however, that the Parties shall consult with each other and attempt to agree on a common state law to govern an issue that affects each of the Regional Interconnection Agreements and such issue is not particular to a specific State's law.

APPENDIX D - COMPLAINTS FILED WITH THE ILLINOIS COMMERCE COMMISSION

1. Complaint Filed by Teleport Communications Group, Inc.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

TELEPORT COMMUNICATIONS GROUP INC.	)	
Complainant	)	
v.	)	Docket No. 97-0404
AMERITECH ILLINOIS	)	
Respondent	)	

COMPLAINT

Teleport Communications Group ("TCG")[1], on behalf of two of its Illinois operating affiliates, TCG Illinois and TCG Chicago, pursuant to the Public Utilities Act (the "Act" or "PUA"), 220 ILCS 5/101 et seq., and Section 200.170 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), 83 Ill. Admin. Code Ch. 1, Part 200, hereby complains that Ameritech Illinois ("Ameritech")[2] has

[1]Teleport Communications Group Inc., 233 South Wacker Drive, Suite 2100, Chicago, Illinois 60606.

[2]Ameritech Illinois, 225 West Randolph Street, Chicago, Illinois 60606.

violated the terms of its Interconnection Agreement with TCG, as approved by this Commission in Docket No. 96-AA-002, in an order entered on January 8, 1997.

The issue giving rise to this Complaint is a simple -- though important -- dispute over a contract definition. TCG requests that the Commission determine that the term "Local Traffic" as used in Section 1.43 of TCG's Interconnection Agreement with Ameritech includes local calls from Ameritech end user customers to Information Service Providers ("ISPs") who are TCG end user local customers. TCG further requests that the Commission find that Ameritech is obligated to pay TCG the applicable reciprocal compensation rate for past and future ISP local calls under the reciprocal compensation provisions of the agreement, plus interest on past due amounts. TCG requests that the Commission expeditiously make this determination, and that during the pendency of this Complaint proceeding it order Ameritech to pay TCG all past-owing amounts withheld by Ameritech, as well as all future amounts to be billed by TCG for ISP traffic while the Commission considers this matter.[3]

This issue is important not only because of the financial impact on TCG of Ameritech's unilateral abrogation of its contractual obligations. It is also important because of what it shows about Ameritech's willingness to exercise its monopoly power against its smaller competitors. Rather than seek this Commission's guidance on this contractual interpretation issue, or wait to address this issue when the time

[3]The New York Public Service Commission has required NYNEX and Rochester Telephone to pay all reciprocal compensation amounts relating to ISP traffic during the pendency of its examination of this issue. *See* fn. Sec. V, *infra*.

arises to renegotiate the contract, Ameritech has unilaterally and without just cause decided that it will no longer pay TCG for the call termination services that TCG provides to it.[4] Because TCG is forced to continue to complete the calls of Ameritech customers without compensation, while Ameritech continues to be paid by those same customers for their calls to the ISPs served by TCG, this is a manifestly unfair action by Ameritech. Ameritech is simultaneously increasing TCG's costs, using TCG's services and facilities without payment, and increasing its own revenues. TCG therefore requests that the Commission find that Ameritech has acted in bad faith in this unjust implementation of its Interconnection Agreement with TCG, and direct Ameritech to cease all such anti-competitive actions in the future.

4. STATEMENT OF FACTS

TCG's Interconnection Agreement with Ameritech was the subject of an arbitration hearing before this Commission, which was concluded by order released November 4, 1996.[5]

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[4]By contrast, Southern New England Telephone (SNET) took the initiative to ask its regulator for advice on whether ISP traffic is subject to reciprocal compensation. Its regulator properly told it that reciprocal compensation applies. Ameritech could certainly have done the same. But Ameritech did not choose to ask this Commission for such advice before unilaterally withholding payment from its small competitors -- perhaps fearful that it would have received the same answer as SNET.

[5]In re Petition of Teleport Communications Group Inc. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Docket No. 96-AB-001, November 4, 1996.

The final agreement, as executed by the parties in response to the Commission's arbitration order, was approved in an order entered on January 8, 1997.[6]

This issue arises as a result of recent efforts by Ameritech to avoid its contractual obligation to compensate TCG for local calls placed by Ameritech end users to ISPs served by TCG. TCG provides local business exchange services, including local telephone numbers and local dial tone services, to a number of ISPs, which are entitled under Federal Communications Commission ("FCC") policies to obtain intrastate local exchange services.[7]

By letter dated July 3, 1997, Ameritech informed TCG that it considers Ameritech end user traffic destined for ISPs whose local dial tone service is provided by TCG to be "non

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[6]TCG Illinois/TCG Chicago and Illinois Bell Telephone Company (Ameritech Illinois), Agreement Dated December 9, 1996, Docket No. 96-AA-002, January 8, 1997.

[7]The FCC originated this policy as long ago as 1983. See MTS and WATS Market Structure, 97 FCC 2d 682, 711-22 (1983). Under FCC rules, ISPs are treated as end users rather than carriers, and are thus able to order local exchange services and are not subject to switched access charges. See 47 C.F.R. § 69.2(m). The FCC recently affirmed its policies, stating that that "ISPs may purchase services from incumbent LECs under the same *intrastate* tariffs available to end users. ISPs may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries." Access Charge Reform, First Report and Order, CC Docket 96-262, FCC 97-158 (rel. May 16, 1997) at 342.

local traffic" not subject to reciprocal compensation.[8] Instead, Ameritech states that it considers such traffic to be "exchange access traffic" under the Interconnection Agreement, but that the FCC's exemption of ISP traffic from access charges means that this traffic is not subject to any compensation.[9] Thus, Ameritech wants TCG to terminate calls from Ameritech customers to ISPs that are TCG's customers for free, while continuing to charge TCG for all "non ISP" traffic from TCG to Ameritech.[10]

By letter dated August 8, 1997, TCG responded to the Ameritech letter and pointed out that this traffic is subject to reciprocal compensation.[11] TCG requested a meeting between designated representatives pursuant to Section 29.18 of the Interconnection Agreement to see if a negotiated settlement of this issue was possible. Subsequently, in discussions with Ameritech, it was agreed between the parties that no negotiated settlement of this issue was possible, inasmuch as Ameritech was firm in its position that traffic delivered to

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[8]*See* page 1 of the July 3, 1997 Ameritech letter, attached as Exhibit 1.

[9]Ibid.

[10]Because more calls from Ameritech customers to TCG customers are ISP calls than the reverse, the net effect of Ameritech's unilateral action is that it is "exempting" itself from paying for the majority of its customers' use of TCG's network. By singling out ISP customers, which TCG has been very successful in serving, Ameritech's policy will disproportionately impact TCG. That result is hardly accidental, but is a purposeful, and intentional, effort to harm competitors like TCG.

[11]TCG's response is attached as Exhibit 2.

ISPs was not subject to reciprocal compensation.[12] In the absence of any possibility of a negotiated settlement of this dispute, TCG has filed this Complaint seeking a determination that Ameritech's interpretation of the Interconnection Agreement is in clear breach of the Interconnection Agreement and contrary to law, and that Ameritech must pay TCG for ISP traffic, including interest on all past due amounts. Additionally, TCG is seeking an immediate Order directing Ameritech to pay TCG for all ISP-related minutes of use under the Interconnection Agreement, both past due and new, during the pendency of this proceeding.

5. THE COMMISSION HAS UNQUESTIONED AUTHORITY TO INTERPRET AND ENFORCE ILLINOIS INTERCONNECTION AGREEMENT, AS REQUESTED BY TCG HEREIN.

This Commission has clear and unquestioned authority under both the federal Telecommunications Act of 1996 ("the Act") and the PUA to interpret or enforce the provisions of Interconnection Agreements.[13] The Commission's

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[12]*See* page 2 of TCG letter, Exhibit 2. *See also*, TCG's letter dated August 19, 1997, attached as Exhibit 3, Ameritech's letter dated August 20, 1997, attached as Exhibit 4, Ameritech's letter dated August 26, 1997, attached as Exhibit 5 and TCG's letter dated August 29, 1997, attached as Exhibit 6.

[13]*See Iowa Utilities Board v. FCC*, Case No. 96-3321, United States Court of Appeals for the Eighth Circuit, slip opinion at 122 ("We also believe that state commissions retain the primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252.") (July 18, 1997). *See also* 220 ILCS 5/10-108, which provides TCG with standing to initiate a complaint against Ameritech.

authority under the federal Act is applicable even where the underlying jurisdiction of the call is interstate.[14] The Commission-approved Interconnection Agreement between TCG and Ameritech specifically provides for Commission review and determination of disputes in the situation presented here, where the parties have been unable to resolve the dispute themselves.[15]

It is important to recognize that TCG's request is really a simple dispute over a contract definition. TCG's request does not ask that the Commission determine the interstate or intrastate character and jurisdiction of the ISP traffic itself, nor does TCG ask that the Commission "regulate" ISP traffic

[14]The Telecommunications Act of 1996 gives state commissions authority to review and arbitrate interconnection agreements governing intrastate, interstate and international traffic. The Commission has in fact already arbitrated matters relating to interstate calls. *See* Petition of Teleport Communications Group Inc. for arbitration to establish an interconnection agreement with Ameritech Illinois, Order, Docket No. 96-AB-001, entered November 4, 1996. Moreover, the Eighth Circuit states, at page 122, that state commission enforcement power "extends to ensuring that parties comply with the regulations that the FCC is specifically authorized to issue under the Act," making it clear that state commissions are empowered to address interconnection agreement issues that relate to matters subject to FCC jurisdiction.

[15]*See*, TCG-Ameritech Interconnection Agreement. § 29.18, pp 49-50, a copy of which is attached as Exhibit 7. This section provides that it applies to "any dispute, controversy or claim" which arises under the Agreement. It goes on to provide, in the event no resolution is possible, for the parties to bring the matter to the Commission "in accordance with the procedures applicable to the resolution of disputes among carriers in the State of Illinois."

is the classic sense.[16] Instead, TCG is asking simply that the Commission declare the appropriate treatment of such "Local Traffic" under the terms of the Interconnection Agreement which this Commission approved, and enforce that determination. TCG's request thus relates to an interpretation and enforcement of the Interconnection Agreement, which was entered into subject to the review and approval of the Commission. As noted above, the authority to take such actions, in the view of the Eighth Circuit, rests *exclusively* in this Commission.[17]

[16]Additionally, the Commission's determination of this matter is not dependent on, nor must it wait for, any action by the FCC. TCG notes that the FCC currently has pending before it a request filed on June 20, 1997 by the Association for Local Telecommunications Services (ALTS) requesting clarification of the rights of a CLEC to receive reciprocal compensation on ISP traffic. The FCC sought comment on that matter by Public Notice released July 2, 1997. The ALTS request and FCC Public Notice were prior to the Eighth Circuit's July 18 declaration regarding the exclusive rights of state commissions to enforce and interpret Interconnection Agreements. The FCC has not as yet acted on the ALTS request. This Commission should not, and need not, await action by the FCC before taking up TCG's request. Indeed, other Commissions that have faced this question have proceeded to address it. *See* Section V, *infra*.

[17]TCG is not bringing this Complaint pursuant to the provisions of Section 13-515 of the PUA. 220 ILCS 5/13-515. That new section of the PUA provides special procedures in cases involving disputes over interconnection agreements. That provision does not become effective, however, until Ameritech receives permission pursuant to Section 271(d) of the federal Telecommunications Act of 1996 to provide interLATA service in the Ameritech region. Ameritech has not received such permission at this time.

The Commission also has authority under the PUA over the interpretation of terms used in the Interconnection Agreement between TCG and Ameritech, as approved by the Commission in Docket No. 96-AA-002. The PUA generally grants the Commission the "power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish." 220 ILCS 5/10-101. Additionally, parties may initiate a complaint for "any act or things done or omitted to be done in violation, or claimed to be in violation, of any provision of this Act, or of any order or rule of the Commission." 220 ILCS 5/10-108. Because the Interconnection Agreement between TCG and Ameritech was the subject of a Commission order, the Commission has jurisdiction to hear complaints regarding the violation of that Agreement. Furthermore, Section 13-203 of the PUC, as amended this year, includes "access and interconnection arrangements and services" within the definition of a telecommunications service. 220 ILCS 5/13-203. Finally, new section 13-514 prohibits telecommunications carriers from "violating the terms of or unreasonably delaying implementation of an interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays or impedes the availability of telecommunications services to consumers." 220 ILCS 5/13-514(8).

6. LOCAL CALLS TERMINATED TO ISPS ARE LOCAL TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION UNDER TCG'S AGREEMENT WITH AMERITECH.

The issue raised in this Complaint involves compensation for traffic that originates with customers of Ameritech and that terminates with customers of TCG. In this case, those calls happen to be Ameritech customers reaching the Internet through ISPs that are TCG's customers. Section 5.6.1 of the TCG/Ameritech interconnection agreement provides Ameritech with the obligation to compensate TCG for that traffic. That section provides as follows:

> Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or TCG which a Telephone Exchange Service Customer originates on Ameritech's or TCG's network for termination on the other Party's network. The Parties shall compensate each other for such transport and termination of Local Traffic at the rate provided in the Pricing Schedule.

In its July 3, 1997 letter, Ameritech claims that traffic from Ameritech customers to ISPs that are TCG's customers is not "Local Traffic" as contemplated in the agreement. Instead, Ameritech claims that such traffic ". . . is Exchange Access Traffic. . . ."

Ameritech is wrong. ISP traffic cannot be "exchange access traffic." The Telecommunications Act of 1996, under the auspices of which this Interconnection Agreement was adopted, defines exchange access as follows:

> (16) Exchange access. The term "exchange access" means the offering of access to telephone ex-

> change services or facilities for the purpose of the origination or termination of *telephone toll services*. 47 USCS § 153 (16) (emphasis added).

Ameritech customers are not placing calls to ISPs for the purpose of originating or terminating "telephone toll services." Instead, customers establish data links to the ISP and request certain information available on the Internet. The ISP then provides the information sought by the end user from the Internet on a packetized data network. No telephone toll services are involved in the ISP calling. Since none of that ISP activity can be considered "telephone toll service," the local connection to the ISP cannot be "exchange access traffic" within the meaning of the statute. The Interconnection Agreement itself supports that interpretation as well. Paragraph 5.6.1 of the TCG/Ameritech Interconnection Agreement provides that access services "shall continue to be governed by the terms and conditions of the applicable federal and state tariffs." Federal regulations prohibit TCG and Ameritech from treating Internet data transmission calls as access services,[18] and for that reason as well Ameritech's argument must fail.

Traffic destined for ISPs cannot, therefore, be considered Exchange Access Traffic. Instead, it is Local Traffic subject to the reciprocal compensation termination charges in the Agreement. Under Section 1.43 of the TCG-Ameritech Illinois Interconnection Agreement, "Local Traffic" is defined as "local service area calls as defined by the Commission." The applicable Illinois statutes make clear that calls from Ameritech's end user customers to ISPs served by TCG con-

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[18] *See* fn. 5, *supra*.

stitute Local Traffic for purposes of the Agreement. Under the definitions included in the PUA, "Local Exchange Telecommunications Service" is defined as the "telecommunications service between points within an exchange, as defined in Section 13-206 [220 ILCS 5/13-206], or the provision of telecommunications service for the origination or termination of switched telecommunications services. 220 ILCS 5/13-204. Since the TCG-Ameritech Interconnection Agreement explicitly refers to this Commission's definitions for purposes of classifying calls as local, the Commission's practice and statutory background are important to resolving this question. Based on these facts, TCG believes there can be no doubt that an Ameritech end user placing a local call to an ISP served by TCG is receiving Local Service within the meaning of Illinois law.

7. AMERITECH HAS TREATED CALLS TO INTERNET SERVICE PROVIDERS AS LOCAL EXCHANGE CALLS.

Significantly, Ameritech's own testimony, admissions, and practices compel the conclusion that ISP traffic must be subject to reciprocal compensation. Ameritech has accepted that conclusion and is estopped from claiming now to the contrary.

First, in Ameritech's written response to the Petition of TCG for Arbitration of the Interconnection Agreement, Ameritech openly discussed the issue of heavy "one-way" users such as ISPs. In arguing why the Commission should not have adopted TCG's proposal to implement a "bill and keep" arrangement in place of reciprocal compensation

terms[19] for Local Traffic, Ameritech witness Susan Springsteen contended that there was an "imbalance between the amount of local exchange traffic that [TCG] and other competitive local exchange carriers ("CLECs") terminate on Ameritech's network and the amount of traffic that Ameritech terminates on the networks of TCG and other CLECs."

Ms. Springsteen testified that from January through June 1996 this imbalance for local traffic was huge – "approximately 1,000 percent." Discovery by the Commission Staff revealed that this imbalance was in TCG's favor -- that there were 10 calls from Ameritech customers to TCG customers for every one call from a TCG customer to an Ameritech customer.

Second, Ameritech was well aware of the fact that such an imbalance would require it to "write checks" to its competitors, but felt that such a result was entirely appropriate. Ameritech witness Springsteen testified in Indiana based on her analysis of TCG's traffic patterns in Illinois,[20] which as noted above indicate that Ameritech customers terminate 10 times the traffic to TCG than vice versa. The Ameritech witness stated that it would be acceptable for Ameritech to pay TCG even if there was a 10 to 1 imbalance, because

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[19]Ameritech now seeks to subject ISP traffic to "bill and keep" which it vigorously opposed in the interconnection negotiations and before the Commission in numerous dockets.

[20]Petition of TCG Indianapolis for Arbitration Pursuant to 252(B) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Corporation, Cause No. 40559, Transcript of Arbitration held August 28, 1996, at pages 234-235.

"Ameritech would be paying for what it's using on someone else's network." Her testimony went as follows:

Q: If -- just to use hypothetical numbers, if 1,000 minutes are coming from Ameritech to be terminated on a competitive carrier but the competitive carrier is only terminating 100 minutes on Ameritech, does that work to Ameritech's disadvantage?

Ms. Springsteen: Not necessarily.

Q: So you would agree that in that situation bill and keep would work to Ameritech's advantage?

Ms. Springsteen: No, because I -- I feel in that case that if a carrier is going to terminate traffic on another carrier's network, that's based upon the type of customers that end carrier has marketed, and bill and keep has nothing to do with it as far as the traffic terminating on each other's network. It's strictly the amount of traffic that's going from one network to another network.

Q: Would you agree in my hypothetical example where there's 1,000 minutes coming into competitive carrier lines and only 100 minutes coming out, that if there were a usage sensitive charge, let's say a dollar a minute, that Ameritech would have to pay money to the competitive local carrier?

Ms. Springsteen: Yes. If it's use sensitive.

Q: And if it was bill and keep. Ameritech would not have to write any checks to that competitive local carrier?

Ms. Springsteen: I would agree with that statement.

Q: Then how would the use of a usage sensitive rate compared to bill and keep advantage Ameritech in the hypothetical I've created?

Ms. Springsteen: Ameritech would be paying for what it's using on someone else's network.[21]

Ameritech, therefore, was well aware during the arbitration and negotiation of its Interconnection Agreement with TCG that already there were ten times the number of Local Traffic minutes from Ameritech's Illinois customers to TCG's Illinois customers as there were Local Traffic minutes from TCG customers to Ameritech customers. The reason for this disparity was simple: TCG had already acquired several ISPs as customers by January 1996. Ameritech was well aware of that fact -- as Ms. Springsteen's testimony in Indiana states, such an imbalance results from the "type of customers that end carrier has marketed."

Third, Ameritech's response to Staff discovery here in Illinois shows that Ameritech itself categorized ISP traffic as

[21]Transcript. pp. 235-237.

"local exchange traffic." In the schedules supporting Ms. Springsteen's Illinois statement, Ameritech categorized terminating traffic as Local, Toll or IXC. Although only Ameritech is in possession of the raw data (and the schedules supporting Ms. Springsteen's testimony are proprietary), given the volume of traffic listed in each category, TCG is 100 percent certain that the traffic to the ISP customers of TCG was categorized at the time as "Local" in Ameritech's records, and characterized as "Local" to this Commission. And Ameritech much be presumed to have come to the realization that ISPs were the "type of customers TCG had marketed" in order to result in this traffic pattern. Thus, by its conduct Ameritech shows that it considered ISP traffic to be local exchange traffic -- until it decided to abrogate its interconnection agreement with TCG and sent its letter dated July 3, 1997.

Fourth, Ameritech has established a pattern of conduct and past practice which indicates that it has <u>always</u> treated calls to ISPs as "local calls." On a practical level, the fact is that Ameritech treats these calls to ISPs as local calls for all other purposes. Ameritech makes no distinction between ISPs served by CLECs like TCG and ISPs served by Ameritech itself in handling these calls. The call from the Ameritech end user to the ISP is dialed and routed like every other local call to an end user. The ISP subscribes to and receives ordinary business local exchange services from Ameritech or the CLEC. The calls are routed through the Ameritech network as ordinary local calls -- as contrasted with the special and higher quality "trunk side" routing and advanced signaling and call processing capabilities for ordinary switched access calls. End user calls to ISPs are treated like other local calls for billing purposes, and Ameritech counts these ISP minutes

as local for purposes of billing, accounting, separations, and network operations. By all the indicia that are relevant to this question, Ameritech itself treats these calls to ISPs as Local Traffic.

Fifth, Ameritech receives revenue from its customers who use the Internet, because every call those customers make to their ISP is billed by Ameritech as a local call. Ameritech also receives additional revenues from the second (and even third) lines that they sell to customers for use in connecting to the Internet. And because of its local measured service pricing, Ameritech is able to receive substantial revenue from customers "surfing the Internet" for hours at a time when the ISP is located beyond the untimed zone of that Ameritech customer. When those ISPs are TCG's customers, TCG transports and terminates those calls, thus reducing Ameritech's costs. Yet Ameritech refuses to pay TCG for that transport and termination service.

Sixth, despite the general telecommunications industry practice of treating ISP traffic as "local," Ameritech failed to raise the issue of treating ISP traffic as anything other than "Local Traffic" during interconnection negotiations or in the arbitration proceeding. If, indeed, Ameritech genuinely believed that ISP traffic was not "Local Traffic" during the negotiations or arbitration, why did it fail to propose then a mechanism that would be needed to account for ISP traffic as something other than "Local Traffic?"

In summary, Ameritech has always known that a large portion of the traffic it terminates on TCG's network is destined for ISPs, and Ameritech has profited handsomely by billing its own customers for that traffic as well as selling them additional lines and ancillary services in conjunction

with that usage. Ameritech's expression of surprise that TCG is billing it for the termination of ISP traffic thus brings to mind the classic scene in the movie "Casablanca" when chief of police Captain Louis Renault (Claude Rains) closes Rick's café, blaming it on illegal gambling. As an explanation, Louis claims, "I'm shocked, shocked to find that gambling is going on in here" just as he is handed his gambling winnings for the night. Unfortunately, in this case, it is TCG's money that Ameritech is walking off with.

8. OTHER STATE COMMISSIONS HAVE CHARACTERIZED ISP TRAFFIC AS LOCAL FOR THE PURPOSES OF RECIPROCAL COMPENSATION

Every single state commission that has considered this issue has ruled that reciprocal compensation rates apply to local calls terminating with ISP end users.

Most recently, the Connecticut Department of Public Utility Control released a Draft Decision on August 19, 1997 directly on point.[22] The proceeding was prompted by a Petition from Southern New England Telephone Company for a Declaratory Ruling that ISP traffic is not to be subject to reciprocal compensation arrangements.[23] The Connecticut

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[22]Petition of The Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Services Provider Traffic, Docket No. 97-05-22, released August 19, 1997. The Decision, released by the three DPU Commissioners, is labeled a "Draft Decision" because the DPU will accept written exceptions on September 3, 1997 prior to making the decision final on September 10, 1997.

[23]It is noteworthy that SNET sought declaratory advice from its regulatory body concerning this issue, in contrast to Ameritech which unilaterally decided the question for itself. Ameritech could

DPU, in ruling against SNET, commented that "ISPs are business local exchange customers that purchase service from SNET, use the network in a similar manner to the Company's other end users and, therefore, should not be treated any differently than other business local exchange customers."[24] The DPU went on to say that "The Department considers calls originating and terminating between these customers (ISPs and other SNET customers) within the same local calling area to be local, and, therefore, should be subject to the mutual compensation arrangements adopted in the Plan."[25]

The New York Public Service Commission has an inquiry presently underway on the question of whether Internet traffic should be subject to reciprocal compensation. In the interim, the Commission has recently stated that NYNEX must continue to pay reciprocal compensation to CLECs for ISP traffic.[26] Earlier, the Staff of the New York Public Service Commission reached a similar conclusion.[27]

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equally easily have sought this Commission's advice before taking the extraordinary step of refusing to pay its lawful bills to CLECs. Ameritech's failure to avail itself of such alternatives should be considered in assessing its good faith -- or lack thereof -- in dealing with its competitors.

[24]Draft Decision at 9.

[25]Ibid.

[26]Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Case 97-C-1275, Ordering Denying Petition and Instituting Proceeding, June 10, 1997 ("New York Telephone Company and Rochester Telephone Company shall continue to pay other local exchange carriers for

The Oregon Public Utility Commission rejected US West's attempt to have ISP traffic explicitly exempt from the reciprocal compensation agreement.[28] The Oregon Commission adopted the arbitrator's conclusion that "[there is no reason to depart from existing law or speculating what the FCC might ultimately conclude in a future proceeding,"[29] choosing instead to treat customer calls to ISPs as local calls for purposes of reciprocal compensation agreements.

The Minnesota Public Utilities Commission similarly held that:

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the exchange of [Internet] traffic based upon the approved reciprocal compensation structures contained in their respective tariffs and interconnection agreements.")

[27]Letter from Allan Bausback, Acting Director, Communications Division, NYPSC, to William Allan, Vice President, Regulatory Matter, New York Telephone Company, May 29, 1997 ("[T]he interpretation expressed in NYT's letters has not been approved by the Public Service Commission and is at odds with NYT's own treatment of this traffic as intrastate in its assessment of usage charges to other customers. [W]e expect NYT to pay compensation to local exchange carriers for traffic delivered by NYT to the interconnecting carriers for termination to any Internet Service Providers. . . .")

[28]Petition of MFS Communications Company, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996, ARB 1, Order No. 96-324, slip op. (Public Utilities Rpts., Ore. PUC December 9, 1996).

[29]Id.

> US West has failed to meet its burden of demonstrating the need to discriminate regarding the handling of ESP traffic. US West does not presently have different local rates for ESPs it has shown no basis for imposing such discrimination on rates in this proceeding. US West has not shown that separating this traffic is required under the law or that it is technically feasible.[30]

The Washington Utilities and Transportation Commission reached the same conclusion in conducting an arbitration proceeding between MFS and US West, holding that there should be no change in the current "local" treatment of ISP traffic.[31] The same conclusion was also reached in Arizona.[32]

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[30]Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc. and MFS Communications Company for Arbitration with US West Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Docket No. P442, 421/M-96-855; P-5321, 421/M-96-909; P-3167, 421/M-96-729, 1996 Minn. PUC LEXIS 161 at *171 (Minn. PUC December 6, 1996).

[31]In the Matter of Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US WEST Communications Company, Inc. Pursuant to 47 USC Section 252, Docket No. UT-960323, issued November 8, 1996 (Washington Utilities and Transportation Commission) (MFS made same argument as in Oregon in support of applying reciprocal compensation to termination of ESP traffic, and arbitrator decided "it is premature to change the treatment of ESPs at this time." Id. at 26).

9. IF AMERITECH WISHES TO CHANGE THE TERMS OF ITS INTERCONNECTION IT MUST RENEGOTIATE.

It is clear that the existing Interconnection Agreement with TCG requires Ameritech to pay TCG for calls to ISPs served by TCG. Ameritech was well aware of the fact that TCG had "marketed to customers" with such inbound calling characteristics, and accepted the proposition it must "write checks" to TCG to "pay for what it is using on TCG's network."

Given that the existing agreement requires such action, Ameritech's attempt to unilaterally apply "bill and keep" to ISP traffic by reclassifying ISP traffic as something other than "Local Traffic" is nothing less than an unlawful and improper effort to "renegotiate" the existing Interconnection Agreement -- without the negotiation, and, if necessary, arbitration by this Commission -- not to mention a clear breach of contract.

f Ameritech now truly believes that ISP traffic is not "Local Traffic," the best way for Ameritech to have raised the issue would have been in connection with the negotiations for a new interconnection agreement to replace the current contract. Although Ameritech has not asked TCG to renegotiate the current contract, TCG would consider such a request since there are provisions of the Interconnection Agreement which do not please TCG.[33] The Interconnection

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[32]Arbitrated Interconnection Agreement for Arizona between Electric Lightwave, Inc. and US West § 1 e. ("The Parties agree that this traffic will be included for traffic exchange. . . .").

[33]Of course, in this circumstance, and as a matter of basic contract law, Ameritech would have to honor the current agreement before

Agreement expires in January, 2000 so that negotiations for the next agreement will begin within the next 18 months to accommodate the nine month negotiation period set forth in the Telecommunications Act of 1996. The Commission should clearly state that Ameritech's transparent and premature effort to change the approved Interconnection Agreement well before the expiration of the contract is inappropriate, and should be taken up, if at all, in the negotiations (or arbitrations) associated with the next TCG/Ameritech Interconnection Agreement.

10. CONCLUSION

TCG requests that the Commission promptly issue an order stating (1) that the term "Local Traffic" as used in its interconnection agreement with Ameritech includes local calls terminated to ISPs subscribing to local exchange service from TCG, (2) that all such traffic is subject of the payment of local reciprocal compensation to TCG by Ameritech, in the same manner as any other local call from an Ameritech local exchange customer to a TCG local exchange customer, (3) that Ameritech is obligated to pay TCG for all ISP traffic delivered to it, including traffic delivered prior to the date of this filing for which Ameritech has refused payment, together with interest on all amounts owed and unpaid, and (4) that Ameritech be reprimanded for anti-competitive and unilateral withholding of payments TCG.

Additionally, TCG requests that the Commission immediately order Ameritech, during the pendency of the Commis-

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good faith negotiations resulted in a new Interconnection Agreement.

sion's consideration of this Complaint, to pay TCG for all Ameritech end user traffic delivered to TCG prior to the filing of this complaint, as well as for all ISP traffic delivered to TCG during the Commission's consideration of this dispute. Such an interim order is appropriate under the circumstances because (1) Ameritech is financially benefitting from the use of TCG's network without payment therefore, and (2) Ameritech has previously paid for ISP traffic delivered to TCG and therefore this interim request merely restores the status quo prior to Ameritech's unilateral decision to refuse to pay for the use of TCG's network.

Respectfully submitted,

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Dated: September 5, 1997

[Certificate of Verification Omitted]

B. Complaint Filed by WorldCom Technologies, Inc.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WorldCom Technologies, Inc., successor in interest to MFS Intelenet of Illinois, Inc., Complainant	)	
v.	)	Docket No.
Illinois Bell Telephone Company d/b/a Ameritech Illinois. Respondent.	)	

COMPLAINT OF
WORLDCOM TECHNOLOGIES, INC.

WorldCom Technologies, Inc. ("WorldCom"), successor in interest to MFS Intelenet of Illinois, Inc., through undersigned counsel, hereby files this complaint against Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") for Ameritech's failure to pay WorldCom reciprocal

compensation for local calls which originate on Ameritech's network and terminate on WorldCom's network.[1]

WorldCom entered into an Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996, dated as of April 8, 1997, by and between Ameritech Information Industry Services, a division of Ameritech Services, Inc., on behalf of Ameritech Illinois, and MFS Intelenet of Illinois, Inc. (the "Agreement"), pursuant to Section 252 of the Telecommunications Act of 1996 ("Federal Act"). The Agreement was filed with and approved by the Illinois Commerce Commission ("Commission") on July 30, 1997.[2]

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[1]For convenience, "WorldCom" will be used to refer to both WorldCom Technologies, Inc., and to its corporate predecessor, MFS Intelenet of Illinois, Inc., in this Complaint.

[2]Ameritech Illinois, Agreement Dated April 8, 1997 between Ameritech Illinois and MFS-Intelenet of Illinois, Inc., *Order*, Docket No. 97 NA-016 (I.C.C. July 30, 1997). This Agreement amended and restated the previous agreement between the parties. *See* Ameritech Illinois, Agreement Dated May 17, 1996 between Ameritech Illinois and MFS Intelenet of Illinois Inc., *Order*, Docket No. 96 NA-002 (Ill. Commerce Comm'n. Aug ___, 1996). On September 24, 1997, this Commission granted the application of MFS Intelenet of Illinois, Inc. ("MFS"), WorldCom, Inc., and WorldCom Technologies, Inc. to withdraw the certificates of service authority held by MFS and WorldCom, Inc., and to award equivalent certificates of service authority to WorldCom Technologies, Inc. as the surviving entity of a corporate reorganization. *Order*, Docket No. 97-0349 (Ill. Commerce Comm'n. Sept. 24, 1997).

WorldCom alleges that Ameritech has violated the Agreement, the orders of the Commission, and the Public Utilities Act ("PUA") by refusing to pay reciprocal compensation for local calls placed by Ameritech's telephone exchange service customers to WorldCom's telephone exchange service customers who happen to be Internet Service Providers ("ISPs"). WorldCom requests that the Commission provide immediate relief by issuing an order finding that all telephone calls placed within the same local calling area from an Ameritech-provided telephone exchange service customer to a WorldCom-provided telephone exchange service customer qualify as local traffic, and ordering Ameritech to compensate WorldCom for terminating its ISP customers' local traffic originated by Ameritech customers, pursuant to the Agreement, the orders of the Commission, and the PUA.

1. Both WorldCom and Ameritech are local exchange carriers ("LECs") authorized by the Commission to provide local exchange services in Illinois pursuant to 220 ILCS 5/13-405. WorldCom has been providing local telephone services as a competitive local exchange carrier ("CLEC") in competition with Ameritech in Illinois since 1994.

2. Pursuant to Section 4-101 of the PUA, this Commission has the authority to supervise all public utilities, including telecommunications carriers, and to monitor their compliance with the PUA, any other law, and the orders of the Commission. 220 ILCS 5/4-101.

3. Pursuant to Section 252(a) of the Federal Act, WorldCom and Ameritech negotiated the Agreement and filed it with the Commission. Acting under authority granted in Section 252(e) of the Federal Act, the Commission approved

the Agreement on July 30, 1997. The Commission has jurisdiction to enforce the terms of the Agreement that Ameritech has breached as alleged in this Complaint.

4. This Commission requires local exchange carriers to interconnect with each other and compensate each other for the use of each others' network.[3]

5. This Commission established reciprocal compensation as the system for compensation for the exchange of local traffic between incumbent LECs and CLECs.[4]

6. Section 251(a) of the Federal Act obligates all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[5]

7. Likewise, Section 251(b)(5) of the Federal Act obligates Ameritech and WorldCom, as local exchange carriers, "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[6]

8. WorldCom and Ameritech have interconnected their networks so that an end user subscribing to WorldCom's telephone exchange service can place calls to end users sub-

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[3]*Re Illinois Bell Telephone Company*, Order, Docket Nos. 94-0096, 94-0146, 94-0301 (Ill. Commerce Comm'n. Apr. 7, 1995), at 78, 82, 83, 96-101. *See also* Ill. Admin. Code tit. 83, § 790.5 *et seq.* (Interconnection).

[4]*Id.* At 98.

[5]47 U.S.C. § 251(a).

[6]47 U.S.C. § 251(b)(5).

scribing to Ameritech's telephone exchange service and vice versa.

9. Both WorldCom and Ameritech provide tariffed local exchange services over their respective networks to end user customers, including some business customers operating as ISPs. As their name suggests, ISPs provide information obtained from numerous sources, including sources accessed through the Internet. Typically, the end users connect to an ISP with a local phone call.

10. WorldCom received a letter from Ameritech dated July 3, 1997, in which Ameritech refused to pay Reciprocal Compensation to WorldCom for traffic that was terminated with ISPs. Ameritech estimated that 37.92% of the traffic originating with Ameritech and terminating to a WorldCom customer terminated with ISPs. Ameritech further stated that it would refuse to compensate WorldCom for 37.92% of the future traffic originating with Ameritech and terminating to a WorldCom customer. A copy of the Ameritech letter is attached as Exhibit A.

11. WorldCom responded to the Ameritech letter by letter dated July 9, 1997, demanding immediate payment of all reciprocal compensation owed to WorldCom by Ameritech for local exchange traffic that was originated by Ameritech's customers and terminated with WorldCom's customers, including WorldCom's ISP customers. A copy of the WorldCom letter is attached as Exhibit B.

12. By letter dated July 30, 1997, Ameritech disputed more than $1,117,000 in compensation owed to WorldCom and has withheld payment of this reciprocal compensation owed to WorldCom for local exchange traffic originated by Ameritech's customers and terminated by WorldCom with

WorldCom's ISP customers. A copy of the July 30, 1997 letter is attached as Exhibit C.

13. On September 8, 1997, WorldCom wrote to Ameritech to notify it that its refusal to pay reciprocal compensation constituted a violation of Section 13-514 of the PUA and offered Ameritech 48 hours to correct the situation. A copy of the September 8, 1997 letter is attached as Exhibit D.

14. Ameritech continues to refuse to pay WorldCom reciprocal compensation for such traffic.

15. Ameritech has charged, and continues to charge, its originating end users local measured service charges under its local exchange service tariffs on file with the Commission for making local calls terminating at ISPs, regardless of which company provides the terminating phone line to the ISP.

16. Ameritech declares traffic to Ameritech ISP customers to be local exchange traffic for purposes of interstate separations and ARMIS reports.

17. Ameritech charges Ameritech's ISP customers local business line rates under Ameritech's local exchange service tariff that enable customers of Ameritech's ISP customers to connect to their ISP by making a local call.

18. Under current FCC rules, the FCC treats traffic to ISPs as local traffic.[7] The FCC is currently examining the

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[7] *In the Matter of Charge Reform*, First Report and Order, CC Docket No. 96-262 (rel. May 17, 1997), paras. 344-348; *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (released May 8, 1997) at 83, 788-789 ("Universal Service Order"); *Implementation of the Non-*

issue of the use of the public switched network by Internet service providers, but has not altered the existing rules.[8]

19. The position asserted by Ameritech has been soundly rejected by at least eight other state regulatory agencies. When US West similarly asserted that traffic originated by or terminated to enhanced service providers should be exempted from reciprocal compensation arrangements under Interconnection Agreements, the states of Arizona,[9] Colorado,[10] Minnesota,[11] Oregon,[12] and Washington[13] all declined

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Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (rel. Dec. 24, 1996), para. 120.

[8] Notice of Inquiry, Usage of the Public Switched Network by Information Service and Internet Access Providers, F.C.C., CC Docket 96-263 (released Dec. 24, 1996)("NOI Proceeding"); see also In the Matter of Request by ALTS for Clarification for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, F.C.C., CCB/CPD 97-30 (F.C.C.) ("ALTS Proceeding")(decision pending).

[9] Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions with US West Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, Opinion and Order, Decision No. 59872, Docket No. U-2752-96-362 et al. (Arizona Corp. Comm. Oct. 29, 1996) at 7.

[10] Petition of MFS Communications Company, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with US West Communications, Inc., Decision Regarding Petition for Arbitration, Docket No. 96A-287T (Col. PUC Nov. 5 1996) at 30. The Colorado Public Utilities Commis-

to treat traffic to enhanced service providers, including ISPs, any differently than other local traffic. When New York Telephone unilaterally withheld payment of reciprocal compensation for local exchange traffic delivered to ISPs served by a WorldCom affiliate, MFS Intelenet of New York, Inc. ("MFS-NY"), and MFS-NY in turn filed a complaint with the New York Public Service Commission ("NYPSC"), the

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sion has since affirmed its rejection of US West's efforts to exclude ISP traffic from reciprocal compensation by rejecting such a provision in a proposed US West tariff. The Investigation and Suspension of Tariff Sheets Filed by US West Communications, Inc. With Advice Letter No. 2617, Regarding Tariffs for Interconnection, Local Termination Unbundling and Resale of Services, docket No. 96A-331T. Commission Order, at 8(Colo. P.U.C. July 16, 1997).

[11]Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US West Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Order Resolving Arbitration Issues, Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Minn. PUC Dec. 2, 1996) at 75-76.

[12]Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996, Commission Decision, order No. 96-324 (Ore. PUC Dec. 9, 1996) at 13.

[13]Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US West Communications, Inc., Pursuant to 47 USC 252, Arbitrator's Report and Decision , Docket No. UT-960323 (Wash. Utils. And Transp. Comm. Nov. 8, 1996) at 26.

NYPSC ordered New York Telephone to continue to pay reciprocal compensation for such traffic.[14]

20. Following the filing of a similar complaint by another WorldCom affiliate, the Maryland Public Service Commission ruled that local exchange traffic to ISPs is eligible for reciprocal compensation and ordered Bell Atlantic to make such payments.[15]

21. Similarly, in response to a petition filed by Southern New England Telephone, the Connecticut Department of Public Utility Control has held that local exchange traffic to ISPs is local in nature and eligible for reciprocal compensation.[16]

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[14]*Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Case 97-C-1275, Order Denying Petition and Instituting Proceeding (N.Y.P.S.C. July 17, 1997). The Order also instituted a proceeding to consider issues related to Internet access traffic. A copy of the Order is attached as Exhibit E.

[15]Letter dated September 11, 1997 from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Esq., Bell Atlantic-Maryland, Inc. A copy of the letter is attached as Exhibit F. Also included in Exhibit F are a September 26, 1997 letter from the Executive Secretary staying the decision to compel Bell Atlantic to make payments pending reconsideration, and an October 1, 1997 letter from the Executive Secretary denying Bell Atlantic's petition for reconsideration and lifting the stay.

[16]Petition of the Southern New England Telephone Company for a Declaratory Ruling Concerning Internet Services Provider Traffic, Docket No. 97-05-22, Decision (Conn. D.P.U.C. Sept. 19, 1997). A copy of the Decision is attached as Exhibit G.

22. The conduct of Ameritech poses a threat to competition by compelling WorldCom to incur uncompensated costs. The number of local minutes of use that Ameritech's customers terminate to WorldCom's ISP end users each month is substantial. Ameritech's refusal to provide reciprocal compensation for these calls will cause WorldCom to incur unrecovered termination costs every month, as well as the costs incurred in attempting to secure Ameritech's compliance with the Agreement. The failure of Ameritech to compensate WorldCom for the use of WorldCom's network will necessarily impede competition by requiring WorldCom to allocate WorldCom's resources otherwise intended to develop and expand its market to offset uncompensated costs incurred to transport and terminate traffic originated by Ameritech's customers.

23. As a common carrier, WorldCom cannot refuse to provide serve, therefore, WorldCom has no ability to diminish the termination costs, which are caused solely by the decision of Ameritech's telephone exchange service customers to place calls to WorldCom's telephone exchange serve customers who happen to be ISPs. As a result of WorldCom's duty to interconnect with Ameritech and provide for seamless exchange of telecommunications. WorldCom could not block any of these calls. In turn, WorldCom has suffered and continues to suffer financially as Ameritech fails to provide any compensation for terminating calls to ISP customers served by WorldCom. Ameritech's knowing and unreasonable actions have an adverse effect on the ability of WorldCom to provide service to its customers.

24. The parties thus owe each other reciprocal compensation for any local traffic terminated on the other's network.

25. Section 1.38 of the Agreement defines "Local Traffic" as:

> a call of which the distance is fifteen (15) miles or less as calculated by using the V&H coordinates[17] of the originating NXX and the V&H Coordinates of the terminating NXX, or as otherwise determined by the FCC or the Commission for purposes of Reciprocal Compensation, provided, that in no event shall a Local Traffic call be less than fifteen (15) miles as so calculated.

26. Section 1.48 of the Agreement defines "NXX" as

> the three-digit code which appears as the first three digits of a seven digit telephone number.

27. The reciprocal compensation provision in Section 5.8.1 of the Agreement states:

> Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or MFS which a Telephone Exchange Service Customer originates on Ameritech's or MFS's network for termination on the other Party's network.

28. Section 5.8.2 of the Agreement states:

> The Parties shall compensate each other for such transport and termination of Local Traffic at the rate provided in the Pricing Schedule.

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[17] "V&H coordinates" is not defined in the Agreement, but it is understood to mean "vertical and horizontal coordinates," or geographic location, and the distance between V&H coordinates is measured in airline miles.

29. All calls that terminate at an NXX within 15 airline miles of the originating NXX, regardless of the identity of the end users, are local calls under Section 1.38 of the Agreement, and reciprocal compensation is due for such calls. This includes any and all calls placed by Ameritech's telephone exchange service customers to any and all of WorldCom's telephone exchange service customers, including any who happen to be ISPs.

30. Ameritech has not identified any NXX to which the local call to an ISP terminates that would make it not eligible for reciprocal compensation. There is only one "seven-digit telephone number" called by an end user to an ISP, and that is the local exchange telephone number of the ISP.

31. Ameritech's refusal to provide reciprocal compensation for the ISP calls of its customers that terminate on WorldCom's network constitutes a material and willful breach of the terms of the Agreement.[18]

32. WorldCom respectfully request that the Commission, pursuant to its authority under the PUA and the specific authority granted to state commissions under Section 252 of the Federal Act to enforce the terms of the agreements its approves, immediately issue an order; (1) finding that all telephone calls placed within the same local calling area from an Ameritech-provided telephone exchange serve customer to a WorldCom-provided telephone exchange customer qualify as local traffic; (2) finding that Ameritech has knowingly impeded the development of competition in the

[18]Ameritech's refusal also violates Section 251(b)(5) of the Federal Act, which sets forth the obligation of all LECs to provide reciprocal compensation.

Illinois local exchange market by unilaterally refusing to provide reciprocal compensation for local calls to the ISP end users of WorldCom; (3) finding that Ameritech knowingly and unreasonably is acting or failing to act in a manner that has an adverse effect on the ability of WorldCom to provide service to its customers; and (4) ordering Ameritech to provide WorldCom with reciprocal compensation for such local traffic and to release any such compensation that has been withheld.

Respectfully submitted,

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Counsel for WorldCom Technologies, Inc

Dated: October 9, 1997

C. Complaint filed by MCI Telecommunications Corp.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

MCI Telecommunications Corporation
and MCI Metro Access Services Transmission Inc.,

vs. No. 97-0525

Illinois Bell Telephone Company,
d/b/a Ameritech Illinois

COMPLAINT

MCI Telecommunications Corporation ("MCI"), on behalf of itself and its wholly-owned subsidiary Metro Access Transmission Services, Inc. ("MCImetro")(collectively referred to as "MCI"), by their attorney, hereby files this complaint against Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech"), pursuant to the Public Utilities Act ("PUA"), 220 ILCS 5/101 et seq., for violating the terms of its Interconnection Agreement with MCI, approved by the Commission Order issued on April 28, 1997 in Docket No. 97-AA-002, Commission orders and the PUA by refusing to pay reciprocal compensation to MCI for local traffic terminated by MCI to its Internet service provider ("ISP") customers. In support of this complaint, MCI states as follows:

1. MCI is a corporation duly authorized to do business in the State of Illinois, and is subject to the jurisdiction of the

Commission. MCI has its principal Illinois offices at 205 North Michigan Avenue, Chicago, Illinois 60601, telephone number (312) 470-2121.

2. MCI is a telecommunications carrier providing competitive interexchange telecommunications services throughout the State of Illinois, and is authorized to provide interMSA and intraMSA services. See Orders of the Illinois Commerce Commission, Docket No. 83-0670, June 27, 1984, May 14, 1996 and September 30, 1997; see also 220 ILCS 5/13-202, 5/13-203 (1993). MCImetro, a wholly-owned subsidiary of MCI, is authorized to provide switched local exchange services in those areas of Market Service Area-1 ("MSA-1") served by Ameritech. *MCI Metro Access Transmission Services, Inc.* Order., Illinois Commerce Commission Docket No. 94-0400, August 16, 1995.

3. Ameritech, which has offices at 225 West Randolph Street, Chicago, Illinois 60601, is a local exchange carrier authorized by the Commission to provide local exchange services in Illinois pursuant to 220 ILCS 5/13-405.

4. As a local exchange carrier, MCI's facilities are interconnected with the facilities of Ameritech so that customers of MCI can place calls to customers of Ameritech, and vice versa. Pursuant to the requirements of the Telecommunications Act of 1996, MCI has completed its arbitration with Ameritech in Commission Docket No. 96-AB-006. The Commission entered an order approving an interconnection agreement between MCI and Ameritech on April 28, 1997 in Docket No. 97-AA-002.

5. On July 3, 1997, MCI received a letter from Ameritech in which Ameritech Illinois stated that it would not pay to MCI reciprocal compensation for the termination of calls

originated by customers of Ameritech and terminated by MCI to MCI's ISP customers because Ameritech considers such calls to be "non-Local Traffic." A copy of Ameritech Illinois' July 3, 1997 letter is attached to this complaint and designated as Exhibit A.

6. MCI responded to the Ameritech letter on August 13, 1997, demanding that Ameritech pay the reciprocal compensation bill as rendered by MCI. A copy of the MCI letter is attached to this complaint and designated as Exhibit B.

7. Thereafter, on September 12, 1997, MCI sent another letter to Ameritech restating its position that calls to ISPs are local calls subject to reciprocal compensation, and notifying Ameritech that by refusing to compensate MCI for the termination of local traffic delivered by MCI to ISPs is knowingly impeding the development of competition in the local exchange market in Illinois and demanding that Ameritech pay MCI reciprocal compensation for traffic terminated to ISPs. A copy of the September 12, 1997 MCI letter is attached to this complaint and designated as Exhibit C.

8. Traffic from Ameritech Illinois customers to ISPs served by MCImetro is local traffic subject to reciprocal compensation for the following reasons:

1) the ISP purchases local service from MCI and receives NXX-XXXXs for such service at its premise;

2) when an Ameritech customer originates a call by dialing the NXX-XXXX of the ISP, that call, as far as MCI is concerned, "terminates" as the ISP premise assigned to the NXX-XXXX;

3) traffic from the Ameritech customer that terminates to that ISP's NXX-XXXX is local to the Ameritech customer; and

4) Ameritech charges its own customers local charges for the calls they make to the ISPs served MCI.

The development of competition in Illinois will be seriously impeded if carriers such as Ameritech are permitted to refuse payment to competitive carriers for interconnection services.

9. Ameritech's failure to pay MCI reciprocal compensation for ISP local traffic constitutes a violation of the parties' interconnection agreement. Specifically, Scheduled 1.2 of the interconnection agreement between MCI and Ameritech defines "Local Traffic" as:

> a call the distance of which is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the terminating NXX or or otherwise determined by the FCC or Commission for purposes of Reciprocal Compensation;...

Schedule 1.2 of the agreement also defines "NXX" as "the three-digit code which appears as the first three digits of a seven digit telephone number."

10. The reciprocal compensation provision of the agreement appears in Section 4.7 and states:

> Reciprocal compensation applies for transport and termination of local traffic billable by Ameritech of MCIm that a Telephone Exchange Service Customer originates on Ameritech's or MCIm's network for termination on the other Party's network. The parties shall compensate each other for such transport and termination of Local Traffic at the rates provided at Item II of the Pricing Schedule; provided that when Ameritech terminates Local Traffic to MCIm, Ameritech shall only be required to pay MCIm the rate for End Office Local Termination.

Thus, the interconnection agreement between MCI and Ameritech requires the payment of reciprocal compensation for traffic that originates and terminates within a local calling area (for these purposes, the local call area of Ameritech). Copies of the relevant provisions of the interconnection agreement between MCI and Ameritech are attached as Exhibit D.

WHEREFORE, MCI respectfully request that the Commission, pursuant to its authority under the PUA and the specific authority granted to state commissions under Section 252 of the Telecommunications Act of 1996 to enforce the terms of approved interconnection agreements, promptly issue an order: 1) finding that the term "Local Traffic" as used in its interconnection agreement with Ameritech includes

local calls terminated to ISPs subscribing to local exchange service from MCI; 2) finding that Ameritech has knowingly impeded the development of competition in Illinois by unilaterally refusing to provide reciprocal compensation for local calls to MCI's ISP customers; 3) finding that all such traffic is subject to the payment of local reciprocal compensation to MCI by Ameritech, in the same manner as any other local call from an Ameritech local exchange customer to an MCI local exchange customer; and 4) ordering that Ameritech immediately pay MCI for all ISP traffic delivered to MCI, including traffic delivered prior to the date of this filing, for which Ameritech has refused payment, together with interest on all amounts owed and unpaid.

Respectfully submitted,
MCI Telecommunications Corporation
And MCI Metro Access Transmission Services, Inc.

By:

Darrell Townsley
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(312) 470-4943

Its Attorney

Dated: October 10, 1997

APPENDIX E - ORDER, ILLINOIS COMMERCE COMMISSION, MARCH 11, 1998

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Teleport Communications Group, Inc.
-vs-
Illinois Bell Telephone Company
Ameritech Illinois

Complaint as to dispute over a contract definition. **97-0404**

WorldCom Technologies, Inc.
successor in interest to MFS Intelenet of Illinois, Inc.
-vs-
Illinois Bell Telephone Company d/b/a Ameritech Illinois

Complaint as to Respondent's failure to pay Complainant reciprocal compensation for local calls which originate on Respondent's network and terminate on Complainant's network. **97-0519**

MCI Telecommunications Corporation
and MCIMetro Access Transmission
Services, Inc.,
-vs- **97-0525**
Illinois Bell Telephone Company,

d/b/a **Consolidated**
Ameritech Illinois

Complaint as to Respondent's refusal to pay reciprocal compensation to Complainant for local traffic terminated by Complainant to its Internet service provider customers

ORDER

By the Commission:

I. INTRODUCTION

On September 8, 1997, Teleport Communications Group, Inc. ("TCG") filed a Complaint against Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech" or "Ameritech Illinois"). In its Complaint, TCG alleged that Ameritech Illinois had violated the terms of its interconnection agreement with TCG as approved by the Commission's order in Docket 96-AA-002. Specifically, TCG complained that Ameritech Illinois had refused to pay TCG reciprocal compensation for local calls originated by end users on Ameritech Illinois' network and terminated to Information Service Providers ("ISPs") on TCG's network in violation of Section 5.6.1 of its interconnection agreement. TCG requested that the Commission issue an order finding (1) that

the term "Local Traffic" as used in the interconnection agreement with Ameritech Illinois includes local calls terminated to ISPs subscribing to local exchange service from TCG; (2) that all such traffic is subject to reciprocal compensation, in the same manner as all other local calls from an Ameritech Illinois local exchange customer to a TCG local exchange customer; (3) that Ameritech Illinois is obligated to pay TCG for all ISP traffic delivered to it, including traffic delivered before the filing of its Complaint for which Ameritech Illinois has refused payment, together with interest on all amounts owed and unpaid; and (4) that Ameritech Illinois be reprimanded for anticompetitive and unilateral withholding of monies owed to TCG.

On October 9 and 10, WorldCom Technologies, Inc. ("WorldCom") and MCI Telecommunications Corp. and MCImetro Access Transmission Services, Inc. (collectively "MCI"), respectively, filed complaints against Ameritech Illinois alleging similar violations of their interconnection agreements and requesting relief similar to that which TCG requested. WorldCom and MCI, respectively, filed motions to consolidate Dockets 97-0404, 97-0519, and 97-0525. On November 4, 1997, the Hearing Examiner, on his own motion, consolidated the three dockets.

Petitions to intervene were filed by AT&T Communications of Illinois, Inc. and Focal Communications Corporation of Illinois ("Focal") in Docket 97-0404. America Online, Inc. and Consolidated Communications, Inc. filed petitions to intervene in all three dockets. All petitions to intervene were granted by the Hearing Examiner.

Pursuant to notice as required by law and the rules of the Commission, a prehearing conference, status hearing and

evidentiary hearing were held before the duly authorized Hearing Examiner in Chicago, Illinois on September 25, 1997, October 9, 1997 and November 21, 1997, respectively. At the evidentiary hearing on November 2, 1997, TCG presented the direct and rebuttal testimony of William Page Montgomery, founder and principal of Montgomery Consulting. WorldCom presented the direct and rebuttal testimony of Alex J. Harris, Vice President of Industry Affairs for WorldCom. MCI presented the direct and rebuttal testimony of Dennis L. Ricca, Senior Regulatory Analyst for Public Policy for the Northern Region of MCI. Staff presented the direct and rebuttal testimonies of M. Al Talbott and Jason P. Hendricks, Chief Telephone Engineer and Economic Analyst, respectively, in the Telecommunications Division of the Commission. Ameritech Illinois presented the direct and rebuttal testimony of Eric L. Panfil, Direct - Local Exchange Competition Issues, and the direct testimony of Suzanne J. Springsteen, a Director of Ameritech Information Industry Services. At the conclusion of the hearing the record was marked "Heard and Taken".

Initial briefs were filed by TCG, WorldCom, MCI, Focal, Staff and Ameritech Illinois. America OnLine, Inc. filed an initial brief in the form of a "position paper" which Ameritech Illinois moved to strike in its Initial Brief. Reply briefs were filed by TCG, WorldCom, MCI, Staff, Ameritech Illinois and Focal Communications. Ameritech Illinois filed a Motion for Leave to Respond to MCI's reply brief and a Response to MCI's reply brief. Draft Orders were also filed on January 16, 1998.

A. Hearing Examiner's Proposed Order was duly served on the parties.

II. POSITIONS OF THE PARTIES

Complainants - Competitive Local Exchange Carriers

TCG, WorldCom and MCI took essentially similar positions on the issues in this proceeding in their testimony. All three carriers (collectively "CLECs") take the position that this proceeding involves a violation of interconnection agreements over which this Commission has jurisdiction. The CLECs state that Ameritech has breached the interconnection agreements by failing to pay reciprocal compensation to the CLECs for local calls originated by end users on Ameritech's network and terminated to Information Service Providers ("ISPs") on the CLECs' networks. The CLECs state that the interconnection agreements clearly require the payment of reciprocal compensation for calls "billable" as local traffic. Because Ameritech bills its customers for calls to ISPs under its local traffic rates, those calls must be subject to the reciprocal compensation provisions of the interconnection agreements.

The CLECs argued that treating calls that terminate to ISPs as local calls is consistent with the manner in which Ameritech Illinois treats this traffic for rating, accounting, and billing purposes. For example, WorldCom witness Harris testified that "when an Ameritech Illinois telephone exchange service customer places a call to an ISP within the caller's local calling area, Ameritech Illinois rates and bills such customer for a local call pursuant to the terms of Ameritech's local tariffs." (WorldCom Ex. 1.0, p. 6). Mr. Harris further stated that Ameritech Illinois treats this traffic and the associated revenue as local for purposes of jurisdictional separations and ARMIS reports. Second, they also argued that a call to an ISP terminates at the ISP before it is connected to the Internet and, therefore, the call is a local call. To support this argument, they contended that, when the call reaches the telephone exchange service purchased by the ISP and to which the called telephone number is assigned, the call is terminated. Third, they further argued that treating calls to ISPs as local calls is consistent with the definition of local traffic contained in the interconnection agreements that they have with Ameritech Illinois. Section 5.8.1 of the WorldCom MFS agreement, for example, provides that:

> "Reciprocal compensation applies for transport and termination of Local Traffic billable by Ameritech Illinois or MFS which a Telephone Exchange Service Customer originates on Ameritech's or MFS' network for termination on the other Party's network."

"Reciprocal Compensation" is defined in Section 1.51:

> "As described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Telecommunications originating on one Party's network and terminating on the other Party's network."

"Local traffic" is defined in Section 1.38 of the Agreement as:

> "a call which is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the

terminating NXX, or as otherwise determined by the FCC or Commission for purposes of Reciprocal Compensation; *provided*, that in no event shall a Local Traffic call be less than fifteen (15) miles as so calculated." (WorldCom Ex. 1.0, pp. 12-13).

In addition, the interconnection agreement between TCG and Ameritech defines local traffic as "local service calls as defined by the Commission." TCG Ex. 7 at 5. Based on these sections the CLECs contend that the agreements' reciprocal compensation provisions apply to local traffic terminated to an ISP. Mr. Montgomery further contended that Ameritech Illinois knew early on that the CLECs intended to market to ISPs. Several of the CLECs also contended that Ameritech Illinois simply regretted its prior position supporting reciprocal compensation, rather than "bill and keep". Fourth, the CLECs argued that calls to ISPs are routed to them over local interconnection trunks and, therefore, that this traffic must be local traffic.

Finally, the CLECs noted that other state commissions and the FCC have determined that traffic terminating to an ISP is local, and that this Commission should reach the same conclusion in this proceeding. Mr. Montgomery states that "[u]nder the FCC rules, the ISPs are not carriers subject to the access charge rules." (TCG Ex. 10, p. 12). Mr. Montgomery further contended that what is sometimes referred to as the FCC's "exemption policy" was a misnomer and is not really an exemption policy, because the FCC had not classified the ISPs as IXCs. Mr. Montgomery also claimed that Ameritech had taken contradictory positions in other FCC dockets. Mr. Harris stated that "the FCC unambiguously

characterized the connection from the end user to the ISPs as local traffic." (WorldCom Ex. 1.0, p. 17)

The CLECs further contend that Ameritech Illinois' refusal to pay reciprocal compensation has anticompetitive implications. Mr. Montgomery, for example, argued that Ameritech Illinois was taking this position because it had been "bested" in the market by the CLECs. (TCG Ex. 10.0, p. 19).

AMERITECH ILLINOIS

Ameritech Illinois took the position that ISP calls are not "local" traffic within the meaning of the interconnection agreement and, therefore, are not subject to reciprocal compensation obligations. Ameritech further stated that the issues raised by the CLECs had already been presented to the Federal Communications Commission ("FCC") for resolution, raised questions regarding the interpretation of the FCC's access charge exemption policy and must be decided in the first instance by the FCC.

Ameritech Illinois witness Springsteen testified that she became concerned in April 1997 because CLEC terminating minutes of use subject to reciprocal compensation were significantly higher than Ameritech Illinois'. She initiated a study to determine why the traffic imbalance exists and concluded that it was due to Internet ISP traffic. Ameritech initiated the contract dispute process in July, 1997, that led to this proceeding. She also disputed the CLECs' contentions that Ameritech Illinois knew that ISP traffic caused the imbalance much earlier than that.

Ameritech Illinois witness Panfil first described the FCC's history regarding the proper treatment of ISP traffic. As explained by Mr. Panfil, the current regulatory treatment of ISP

traffic has its origins in decisions which the FCC made in 1993 when it created the carrier access charge regime in response to the pending divestiture of the Bell Operating Companies by AT&T. *MTS and WATS Market Structure*, 97 FCC 2d. 682 (1983) (*111983 FCC* Order"). In 1983, Mr. Panfil stated that there was no question that both IXCs and ISPs used the local exchange networks in precisely the same way to originate and terminate interstate calls. Although the FCC required all IXCs to begin paying access charges, for policy reasons the FCC exempted ISPs from such charges and permitted them to continue paying local exchange rates. 1983 *FCC* Order, § 711. He further explained that the FCC's policy decision stemmed from the fact that the information services industry was in its infancy and reflected a concern that application of access charges at 1983 levels would impose rate shock.

Mr. Panfil asserts that in 1987, the FCC recognized that ISPs were not paying enough to cover the costs of the exchange access facilities they used and proposed to terminate the exemption. *Amendments* of *Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Notice of Proposed Rulemaking* FCC Rcd 4305 (1987). After intense lobbying by the ISP industry, however, Mr. Panfil stated that the FCC reluctantly concluded that the time was not yet right to correct the disparity.

Ameritech acknowledged that, in its 1996 access charge reform order, the FCC once again declined to impose carrier access charges on ISPs. In *re Access Charge Reform*, CC Docket Nos. 96-262 et al., 11344-48 (released May 16, 1997). However, at the same time, the FCC instituted a new proceeding to address the implications of information services more broadly, with the intention of developing proposals

that the FCC contended would be "sensitive to the complex economic, technical and legal questions raised in this area." *Notice of Inquiry, Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Docket 96-202 (released Dec. 24, 1996).

Mr. Panfil further explained that the FCC is currently addressing precisely the same issue raised by the CLECs in this case in a proceeding initiated by the ALTS. *In the Matter of Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, CCB/CBD 97-30 ("ALTS Docket"). ALTS has requested an expedited FCC ruling that "calls to an Information Service Provider made from within a local calling area must be treated as local calls by any and all LECs involved in carrying those calls." Mr. Panfil stated that Ameritech and all of the Complainants have submitted pleadings in FCC Docket 97-30 which set forth their respective positions. Indeed, Ameritech noted in its Reply Brief that the ALTS request was premised on the FCC's "exclusive jurisdiction". The comment cycle at the FCC is complete, and according to Mr. Panfil, the FCC is expected to issue a ruling within the near future.

Ameritech Illinois also disputed the CLEC's substantive arguments relative to the nature of ISP traffic. First, Mr. Panfil stated that Ameritech Illinois treats calls terminated to ISPs as local calls for billing and rating purposes solely due to the FCC's access charge exemption for ISPs, and that the billing and rating of such calls does not determine whether the call is a local call under state jurisdiction. He further stated that ISP calls are, in fact, interstate calls within the jurisdiction of the FCC. With respect to separations and reporting procedures, Mr. Panfil maintained that these proce-

dures will be reviewed once the FCC has issued its ruling in the ALTS proceeding. He also noted that FGA traffic - which is indisputably access traffic - was also treated initially as local for these purposes.

Mr. Panfil contended that Ameritech Illinois' interconnection agreements with the CLECs do not define ISP calls as local calls. Mr. Panfil argued that, although the FCC has exempted ISPs from paying access charges, it never has considered ISP traffic to be local traffic. In his view, had the FCC concluded that ISP traffic is local traffic, the FCC would not have had the authority to decide whether or not ISPs should be required to pay access charges. Therefore, such calls are exchange access and, therefore, are not subject to the reciprocal compensation provisions in the agreements.

Third, Mr. Panfil argued that, although the call termination definition used by WorldCom witness Mr. Harris is an accurate service definition, it is not an appropriate *jurisdictional* definition. He testified that the information service provided by the Internet ISPs to the end user is always jurisdictionally interstate. He further compared calls terminated to ISPs to Interstate Feature Group A ("FGA") access service, whereby an IXC's toll switch is assigned a standard local telephone number within the caller's local calling area, and the end user is billed for a local call. When the call is connected to the IXC's toll switch, that switch gives the end user a second dial tone, and the end user then dials a long distance call. Mr. Panfil pointed out that, while local charges are assessed for the local portion of the call, and while the FGA *service* provided by the LEC terminates at the IXC's POP, the calls are not jurisdictionally local calls. Rather, they are *jurisdictionally* interstate or intrastate access service. He added that local charges are billed to the end user because there has

been no feasible way to suppress them. Mr. Panfil also maintained that Ameritech Illinois' position in other FCC dockets were not inconsistent with its position in this docket, contrary to Mr. Montgomery's contentions.

Fourth, Mr. Panfil and Ms. Springsteen both stated that the fact that ISP traffic is routed over local interconnection trunks is irrelevant. They noted that interim number portability ("INP") traffic and FGA traffic are also routed over these trunks even though INP traffic and FGA traffic are considered to be exchange access traffic. Finally, Mr. Panfil stated that other state commissions' decisions regarding the nature of ISP traffic are irrelevant to this proceeding, and are wrong in any event.

Mr. Panfil further took the position that application of reciprocal compensation requirements to this traffic would have unwarranted financial results. He pointed out that, because of the FCC's access charge exemption policy, handling ISP traffic is a losing proposition for all LECs. That is because the local rate structure is not compensatory for calls with long holding times, as are typical of Internet calls. Mr. Panfil stated that, if reciprocal compensation for Internet calls is required, what is already a losing proposition for the LEC becomes financially disastrous. In support, he provided data which showed the financial burden imposed on Ameritech Illinois by "typical" Internet traffic, with and without reciprocal compensation obligations. In its Initial Brief, Ameritech Illinois stated that such a result would be contrary to the Commission's policies established in its *Customers First* proceeding for reciprocal compensation, which stated that such arrangements should be equitable to both parties.

Mr. Panfil also denied the CLECs' allegations that Ameritech's position in this case is anticompetitive. Mr. Panfil explained that Ameritech did not object to the CLECs competing for ISP traffic. He explained that Ameritech only objects to "subsidizing" the CLECs' marketing efforts through intercarrier compensation arrangements that require it to pay more to the CLECs than it receives from the end user in the first instance. He further stated that Ameritech's position was not based on the mere fact that it is a net "payor" under these agreements. He stated that Ameritech took the risk that CLECs would target customers with high terminating traffic requirements; however, Ameritech Illinois had not assumed the risk that the CLECs would target ISP traffic which has unusually long holding times and demand reciprocal compensation for traffic which is not local traffic in any event.

In the event that this Commission decides to address the issues on their merits now and concludes that some form of compensation is required, Mr. Panfil proposed an interim solution. This solution would apply until either the FCC resolves this issue or an appropriate economic structure is created that allows all carriers to recover their costs. Under his plan, Ameritech Illinois and the CLECs would develop an estimate of the revenues that they currently receive for Internet ISP traffic. The companies could jointly determine what percentage of the switching and transport facilities used for calls terminated to an ISP belong to each company. The percentage factor could then be used to allocate the revenue pool between the companies. This approach, Mr. Panfil stated, would produce equitable results and would avoid creating a situation where one competitor subsidizes another.

In its Initial Brief, Ameritech Illinois contended that the FCC has preemptive jurisdiction over the issues in this proceeding. Ameritech Illinois argued that the FCC has exclusive jurisdiction over interstate traffic and that the FCC must be permitted to clarify its access charge exemption relative to this traffic. It further contended that the doctrine of primary jurisdiction requires that the Commission defer this proceeding and await the FCC's decision before considering the complaints on their merits. Ameritech Illinois noted that the FCC is uniquely suited to interpret its own prior orders; that the ISP traffic issue is not unique to Illinois and requires a single, uniform resolution applicable to all states; that a deferral of action in this case would avoid the risk of inconsistent results between this Commission and the FCC; and that a premature decision here would adversely affect the FCC's performance of its regulatory responsibilities. Finally, Ameritech Illinois argued that principles of comity, non-interference among decision-making bodies and interests of administrative economy justified deferral of action by this Commission.

STAFF

Staff took the same position as the CLECs, *i.e.*, that calls terminated to an ISP are local calls subject to reciprocal compensation. Staff contended that distinguishing between end user calls terminated to ISPs and those terminated to other end users, for purposes of reciprocal compensation, would violate the terms of the interconnection agreements between Ameritech Illinois and the CLECs. Staff argued that, because the agreements provide that reciprocal compensation is applicable to "Local Traffic billable by Ameritech," and since Ameritech Illinois currently charges its end users local service charges when completing calls that terminate at

the CLECs' ISP customers, withholding reciprocal compensation on those calls would violate the terms of the interconnection agreements.

Staff also took the position that there was no technical basis upon which to distinguish between end user calls terminated to ISPs and those terminated to any other type of end users.

Finally, Staff argued that the FCC does not consider ISP traffic to be exchange access traffic. This is because the current FCC rules classify ISPs as "end users" and not as telecommunications carriers. Further, in its *Access Charge Reform Order*, Staff argued that the FCC had concluded that ISPs should remain classified as end users for purposes of the access charge system. (*Id.* at 1348). In its rebuttal testimony, Staff further contended that ISP traffic is not exchange access service. Staff argued that, when the originating end user makes an FGA call and that call is connected to the IXC's network, the originating end user uses the IXC's network to exchange telecommunications traffic with the end user to which the call is terminated. However, when an originating end user calls an ISP in order to use the Internet, the traffic exchanged after the call is terminated to the ISP is not considered to be telecommunications traffic by the FCC. Instead, it is considered to be an information service. Staff also noted that, although the interconnection agreements between Ameritech Illinois and the CLECs do not explicitly define local traffic to include ISP traffic, these agreements do not define local traffic to exclude ISP traffic.

Staff also contended that Mr. Panfill's FGA analogy was inapt, because FGA is exchange access service. Rejecting Mr. Panfill's distinction between service and jurisdictional

definitions, Staff responded that the FCC treats ISPs and end users, and, therefore, an ISP call is a local call. Staff opined that a change in the FCC's exemption policy was unlikely. Staff agreed, however, that the trunks on which ISP traffic travels do not necessarily impact jurisdiction. Staff also questioned whether the FCC has jurisdiction over ISP traffic at all.

With respect to Ameritech Illinois, interim solution, Staff recommended that it not be adopted because it is not consistent with the interconnection agreements. Staff further suggested that the solution to the financial problem identified by Ameritech would be to raise end user rates, a solution which it stated is outside the scope of this proceeding.

COMPLAINANT'S RESPONSE TO AMERITECH

All three carriers claimed that this was a simple contract dispute that could be resolved within the specific context of the interconnection agreements. TCG further argued that computer-based transactions are different from telephone services and that Mr. Panfil's FGA analysis was incorrect. WorldCom and MCI also contended that FGA was not a good analogy because it has different technical interfaces and/or was otherwise irrelevant. MCI claimed that Ameritech Illinois had not challenged the notion that ISP traffic was local traffic until last summer and that it should have been aware that MCI intended to market to this segment.

WorldCom, TCG and MCI also opposed Ameritech's interim compensation proposal. They argued that it was not consistent with the interconnection agreements. TCG further claimed that Internet traffic would be difficult to track and, therefore, that Ameritech Illinois' interim revenue pooling proposal would be difficult to implement.

COMMISSION ANALYSIS AND CONCLUSION

In the present consolidated cases, Complainants have asked this Commission to enforce certain provisions of the Commission-approved interconnection agreements between Ameritech Illinois and the individual complainants. This Commission's jurisdiction under the Public Utilities Act and Section 252 of the Telecommunications Act of 1996 (the "Act") to interpret and enforce the terms of interconnection agreements is not disputed. *See Iowa Utilities Board v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997).

The language of the interconnection agreements define local traffic, define switched access and define reciprocal compensation. The interconnection agreements of MCI and WorldCom define "Local Traffic" as follows:

> [A] call which is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the terminating NXX or as otherwise determined by the [Federal Communications Commission] or Commission for purposes of Reciprocal Compensation; *provided*, that in no event shall a Local Traffic call be more than fifteen (15) miles as so calculated.

WorldCom Ex. § 1.38; MCI Ex. 3.0, Schedule 1.2, at 8. The interconnection agreement of TCG defines Local Traffic as "local service calls as defined by the Commission" TCG Ex. 7, at 5.

The interconnection agreements provide for reciprocal compensation between Ameritech and the CLECs as follows:

> Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or [the CLECs] that a Telephone Exchange Service Customer originates on Ameritech's or [the CLECs] network for termination for termination on the other Party's network . . . .

The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. . .

WorldCom Ex. 4, § 5.8.1, 5.8.3; TCG Ex. 7, ¶ 5.6, at 14; MCI Ex. 3, ¶ 4.7, at 16.

The interconnection agreements define Switched Exchange Access Service as follows:

> [T]he offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access Services.

WorldCom Ex. 4.1; TCG Ex. 7, at 7; MCI Ex. 3, Sch. 1.2, at 12.

The agreements unambiguously provide that reciprocal compensation is applicable to local traffic billable by Ameritech. Since Ameritech Illinois currently charges end users local service charges when completing calls that terminate at the complainants' ISP customers, the plain reading of the interconnection agreements inevitably leads to the conclusion that reciprocal compensation charges should apply to

those calls. The interconnection agreements do not distinguish between end user calls terminated to ISPs and those terminated to other end users, nor as Staff noted, is there any technical basis upon which to distinguish between end users.

There is no legal basis for treating ISP traffic differently than the traffic of any other similarly-situated end users for purposes of reciprocal compensation. Nothing in the Act exempts ISP traffic or otherwise incumbent LECs from their reciprocal compensation obligation with respect to local traffic. The Act imposes upon all LECs the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications" 47 U.S.C. 251(b)(5). We conclude that Ameritech Illinois, by discontinuing its reciprocal compensation payments thereby violated, and is continuing to violate, its interconnection agreements, and its duty under the Act.

The Communications Act of 1934, as amended by the Telecommunications Act of 1996, FCC rules, and industry practice- including the plain language of the interconnection agreements, fully support our conclusion. Contrary to Ameritech Illinois' contentions, ISP traffic is *not* exchange access. First, we are persuaded by Mr. Harris' explanation of industry practice with respect to call termination. He testified that call termination within the public switched network "occurs when a call connection is established between the caller and the telephone exchange service to which the dialed telephone number is assigned, and answer supervision is returned." (WorldCom Ex. 1.0 at 7). He further noted that "call termination" does not mean that the call ends. Rather, the call ends when one party to the call disconnects by hanging up.

Ameritech Illinois' conception that the "jurisdictional" basis for a call is determined by a determination of the ultimate end points of the call (such as the databases and web sites accessed by an internet user) and that therefore, the FCC has exclusive jurisdiction over the issue in this docket reflects not only an outdated conception of the telecommunications network, but from a legal standpoint is belied by the Act and the FCC's own decisions. As Staff cogently explained, when an originating end user makes a Feature Group A call and that call is connected to the interexchange carriers' network, there is no dispute that the originating end user uses the interexchange carrier's network to exchange telecommunications traffic with the end user to which the call is terminated. However, when an originating end user calls an ISP provider in order to use the internet, the traffic exchanged after the call is terminated to an ISP is not considered to be telecommunications traffic by the FCC. Instead it is considered to be an information service and that is true regardless of whether the ISP retransmits information received over such calls to or from further interstate or international destinations.

The FCC has concluded that information services are not telecommunications services, and indeed, the Telecommunications Act draws clear distinctions between "telecommunications", "information service", and "exchange access."

As recently as May of 1997 the FCC indicated that it considers internet access as consisting of more than one element:

> When a subscriber obtains a connection to an internet service provider via voice grade access to the public switched network, that connection is a

> telecommunications service and is distinguishable from the Internet service provider's offering.

FCC Joint Board on Universal Service ¶ *789*

Based on these critical distinctions the FCC has determined that ISP traffic is *not* an exchange access service, but rather, ISPs should be treated as "end users."

With respect to Ameritech Illinois' argument that the FCC has exclusive jurisdiction over the question presented here, the FCC has noted that,

> "ISPs do pay for their connections to incumbent LEC networks by purchasing service under state tariffs... To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators."

FCC Access Charge Reform Order at ¶ *346*

If the FCC had concluded that calls to ISPs are interstate in nature and thus that the connections between incumbent LECs and Internet ISPs were interstate in nature, like those between incumbent LECs and IXCs for purposes of interstate calls, it would have concluded that it has the authority to address those compensation issues. Accordingly, contrary to Ameritech Illinois' suggestions, there is no jurisdictional conflict here and this proceeding may be resolved as above, through a straight-forward interpretation of contractual terms which is well within the parameters established by existing federal policy.

Ameritech is obligated by its interconnection agreements to pay reciprocal compensation when its customers call internet service providers served by a competing LEC. Nevertheless, the Commission acknowledges that a significant economic issue is raised when regulation permits two different rate structures to be associated with a single telephone call. The evidence in this case shows the incumbent LEC bills customers a single charge for local calls, while the new LEC terminating the call charges the incumbent LEC on a *minutes of use* basis.

Necessarily then, the incumbent LEC will not fully recover the cost of calls to ISP's which last a long time. In these cases, the incumbent LEC will not recover from end-users as much revenues as it incurs in reciprocal compensation charges paid to the terminating carrier.

The Commission, like the FCC, is aware that Ameritech Illinois may need to change its rate structure to correct the alleged underrecovery of providing local network services for connections to ISPs.

There is no dispute that the FCC is currently considering various issues regarding internet communications. However, the initiation of that proceeding provides an insufficient basis for deferring a decision here. It is possible that the FCC may reverse itself and institute some type of access charge or other compensation regime which would be applicable to carriers, or ISPs or other telecommunications end-users. It is also quite plausible that the FCC may conclude that the current situation, so recently reaffirmed by the FCC, should remain undisturbed. The ultimate conclusion, as well as its timing can only be the subject of speculation. This Commission anticipates that if the FCC institutes a change in policy

which impacts the interconnection agreements or any other aspect of state policy, the parties will bring that matter to the Commission's attention in an appropriate fashion.

Ameritech Illinois' proposed interim solution is unacceptable. As MCI witness Ricca points out, it is little more than an attempt to rewrite the interconnection agreement to institute meet-point billing for a particular subset of calls. Ameritech Illinois had every opportunity to present such a proposal in the arbitrations but did not do so.

Finally, we are compelled to comment on our concerns regarding the event giving rise to this complaint. A number of years ago this Commission approved Ameritech Illinois' proposal to adopt a residential untimed local calling rate as part of a comprehensive restructure of the company's rates. While the Commission is certainly aware that the telecommunications environment has changed significantly since then, and the popularity of the internet may have altered the cost assumptions prevalent at the time, we find that Ameritech Illinois' unilateral action of withholding reciprocal compensation payments is wholly inappropriate. By withholding those payments from its local exchange competitors, surely Ameritech Illinois recognizes that it has done nothing to meaningfully address the alleged underrecovery of costs which, if it exists at all, arises primarily from its own rate structure. For more than a year Ameritech Illinois paid reciprocal compensation treating calls to ISPs as local traffic. Rather than withholding payment, Ameritech Illinois could have, and should have, simply petitioned this Commission for a clarification of its obligations under the interconnection agreement.

Indeed, Ameritech Illinois' unilateral "remedy" is so ill-tailored to its perceived problem that it lends substantial credence to the complainants' allegations that Ameritech Illinois' conduct is intentionally anticompetitive. Ameritech Illinois' local exchange competitors are obligated by law to terminate calls made by Ameritech Illinois' customers, they incur costs in order to do so, and they are entitled to be compensated for the use of their equipment and facilities. Significantly, the competitive local exchange carriers can hardly be considered the cause of any additional unrecovered *network* costs which Ameritech Illinois believes arise from increased internet usage.

Even if the complainants have specifically targeted ISPs in their marketing efforts, that is no more objectionable than if a carrier chooses to target a telemarketing firm, a take-out restaurant or a high usage household. As Focal points out, the market for service to ISPs is a growth market both in terms of new ISP entrants into the market and the growing demand for service from new and existing ISPs. It is therefore a natural target for a new entrant. The record establishes that the complainants, are highly dependent upon reciprocal compensation payments to finance their operations. The evidence suggests that traffic to ISPs can represent in excess of 60% of the new entrants' reciprocal compensation billings to Ameritech Illinois. The withholding of the payments caused and continues to cause complainants serious harm and has resulted in an anticompetitive impact which is contrary to the public interest.

Ameritech Illinois correctly points out that the decisions of other state commissions are not binding, and indeed, we have made an independent evaluation of the evidence presented in this docket. Nevertheless, it is striking that over a

dozen states have considered this issue, and without exception all the state commissions have determined that calls to ISP's should be classified as local calls for the purpose of assessing reciprocal compensation. Such agreement among the states concerning a controversial issue is rare. Notably, Ameritech Illinois makes no attempt to distinguish these decisions on the basis of facts or law but merely asserts that the decisions are "wrong". We think that is unlikely, and we join our counterparts in those states which have held that calls to ISPs are local calls and are subject to reciprocal compensation. The complaint is granted.

The Commission, having considered the entire record herein and being fully advised in the premises hereof, is of the opinion and finds that:

(1) Illinois Bell Telephone Company d/b/a Ameritech Illinois, is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act;

(2) Ameritech Illinois and the complainants herein have entered into interconnection agreements pursuant to the Telecommunications Act of 1996; those interconnection agreements have been duly approved by Order of this Commission;

(3) The Eighth Circuit Court of Appeals in *Iowa Utilities Bd. v. FCC*, 120 F3d 753, 804 (1997) found that state commissions "retain primary authority to enforce the substantive terms of the agreements made pursuant to section 251 and 252"

(4) the Commission has jurisdiction of the parties and the subject matter herein;

(5) the recital of facts and conclusions thereon set forth in the prefatory portion of this order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law;

(6) Ameritech Illinois has violated its interconnection agreements with each of the complainants by failing to pay reciprocal compensation for calls which are within 15 miles and for traffic that is billable as local from its customers to Internet Service Providers that are the customers of the complainants;

(7) Ameritech Illinois should be required to pay each of the complainants all charges for reciprocal compensation for calls which are within 15 miles and for traffic that is billable as local from its customers to ISPs that are the customers of the complainants; similarly, each of the competitive local exchange carriers should be required to pay Ameritech Illinois for all charges for reciprocal compensation for traffic that is billable as local from its customers to the ISPs that are customers of Ameritech Illinois;

(8) the interpretation of the interconnection agreements made in this order should be effective from the dates of those interconnection agreements; Ameritech Illinois should be required to pay each of the competitive local exchange carriers the amount of money that has been withheld by Ameritech Illinois since it stopped making payments for ISP traffic; such payments shall include interest at the statutory rate for all withheld payments;

(9) any outstanding pleadings or motions not previously disposed of should be disposed of in a manner consistent with the results herein;

(10) the Chief Clerk of the Commission should be directed to maintain all information identified as proprietary and data so designated in this proceeding in a manner which will not permit disclosure, dissemination, revelation or reproduction thereof without further order of the Commission.

IT IS THEREFORE ORDERED that the interpretation of the interconnection agreements made in this order shall be effective from the dates of those interconnection agreements and that Ameritech Illinois shall henceforth pay each of the complainants all charges for reciprocal compensation for all calls which are within 15 miles and for that traffic that is billable as local from its customers to ISPs that are the customers of the complainants. Similarly, each competitive local exchange carrier shall pay Ameritech Illinois for all charges for reciprocal compensation for traffic that is billable as local from its customers to the ISPs that are customers of Ameritech Illinois.

IT IS FURTHER ORDERED that within five business days of entry of this Order, Ameritech Illinois shall pay each of the competitive local exchange carriers all reciprocal compensation charges which have been withheld, with interest at the statutory rate. To the extent Ameritech Illinois billed the competitive local exchange carriers for reciprocal compensation and then later provided them with credits on their bills for ISP traffic, it shall resubmit bills to the competitive local exchange carriers for the credited amounts.

IT IS FURTHER ORDERED that the Chief Clerk of the Commission shall maintain all information identified as proprietary and data so designated in this proceeding in a manner which will not permit disclosure, dissemination, revelation or reproduction thereof without further Order of the Commission.

IT IS FURTHER ORDERED that any outstanding pleadings or motions which have not previously been disposed of shall be disposed of in a manner consistent with this Order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill.Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 11th day of March, 1998.

(SIGNED)

DAN MILLER

Chairman

(S E A L)

APPENDIX F - COMPLAINT NO. 98-C-1925, FILED IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, MARCH 27, 1998.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

ILLINOIS BELL TELEPHONE COMPANY
d/b/a AMERITECH ILLINOIS,
Plaintiff,

v.

Case No. 98 C 1925

WORLDCOM TECHNOLOGIES, INC. as successor in interest to MFS INTELENET OF ILLINOIS, INC., TELEPORT COMMUNICATIONS GROUP INC., MCI TELECOMMUNICATIONS CORPORATION and MCIMETRO ACCESS TRANSMISSION SERVICES, INC., AT&T COMMUNICATIONS OF ILLINOIS, INC., and FOCAL COMMUNICATIONS CORPORATION

and

DAN MILLER, RICHARD KOLHAUSER, RUTH KRETSCHMER, KARL MCDERMOTT, and BRENT BOHLEN, Commissioners of the Illinois Commerce Commission (In Their Official Capacities and not as Individuals),

COMPLAINT

Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech Illinois"), by and through its attorneys, brings this action for declaratory, injunctive and other relief and alleges as follows:

INTRODUCTION

1. Ameritech Illinois brings this action pursuant to § 252(e)(6) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151, et seq.) (the "Act") and 28 U.S.C. § 1331 to challenge determinations made by the Illinois Commerce Commission ("Commission" or "ICC"), acting through the defendant Commissioners, with respect to various obligations of Ameritech Illinois under five interconnection agreements ("Agreements") entered into pursuant to §§ 251 and 252 of the Act. Among other things, the Agreements establish the rates, terms and conditions under which defendants WorldCom Technologies, Inc. as successor in interest to MFS Intelenet of Illinois, Inc. ("MFS"), Teleport Communications Group, Inc., ("TCG Illinois" and "TCG Chicago"), MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. ("MCI"), AT&T Communications of Illinois, Inc. ("AT&T"), and Focal Communications Corporation of Illinois ("Focal") (collectively, the "Carrier Defendants") may interconnect with, obtain access to and use Ameritech Illinois' telephone network, facilities and services to provide local telecommunications services in Illinois. Copies of pertinent portions of the voluminous Agreements are attached hereto as Exhibits A-1 through A-5.

2. Ameritech Illinois seeks review of the Commission's March 11, 1998 Order (the "ICC Order") in ICC Case Nos. 97-0404, 97-0519 and 97-0525 (attached hereto as Exhibit B). The ICC Order wrongfully requires Ameritech Illinois to pay reciprocal compensation to the Carrier Defendants with respect to calls (the "Internet ISP Calls") placed by Ameritech Illinois customers through the Internet via Internet service providers ("ISPs") who, in turn, are customers of the Carrier Defendants. The ISPs provide access to the Internet. The ICC Order requires Ameritech Illinois to (1) pay within five business days of the issuance of the ICC Order previously withheld amounts (plus interest) associated with the Internet ISP Calls; and (2) resume payment of reciprocal compensation with respect to Internet ISP Calls in the future.

JURISDICTION AND VENUE

3. This is a civil action arising under the Act, a law of the United States. This Court has jurisdiction over this action pursuant to 47 U.S.C. § 252(e)(6), 28 U.S.C. § 1331 and 28 U.S.C. §§ 2201 and 2202.

4. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b). Ameritech Illinois and all defendants reside in this District. In addition, a substantial part of the property that is the subject of the Agreements is situated in this District and a substantial part of the events giving rise to this action occurred in this District. This is an "appropriate Federal district court" within the meaning of 47 U.S.C. § 252(e)(6).

PARTIES

5. Plaintiff Ameritech Illinois is a corporation organized under the laws of the State of Illinois, with its principal place

of business in Illinois. Ameritech Illinois is a wholly-owned subsidiary of Ameritech Corporation that, among other things, provides telephone exchange service, exchange access and other telecommunications services within the State of Illinois. Ameritech Illinois is the "incumbent local exchange carrier" ("incumbent LEC"), as that term is defined in § 251(h) of the Act, in its authorized service areas in the State of Illinois.

6. Defendant MCI Telecommunications Corporation is a corporation organized under the laws of the State of Delaware. It provides, through operating subsidiaries, long distance telecommunications service, telephone exchange service, exchange access and other telecommunications services in the State of Illinois. Defendant MCImetro Access Transmission Services, Inc. ("MCImetro"), a subsidiary of MCI Telecommunications Corporation, is a corporation organized under the laws of the State of Delaware. MCImetro is a party to an interconnection agreement with Ameritech Illinois, whereas MCI Telecommunications Corporation was a party to the ICC's arbitration and approval process that yielded that Agreement. "MCI" is used throughout this Complaint to refer to MCI Telecommunications Corporation and/or MCImetro Access Transmission Services, Inc. MCI is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of §§ 251(a) and 252(a) of the Act.

7. Defendant Teleport Communications Group, Inc. is a corporation organized under the laws of Delaware. TCG Illinois and TCG Chicago are New York general partnerships and are operating affiliates of Teleport Communications Group, Inc. "TCG" is used throughout this Complaint to refer to Teleport Communications Group, Inc., TCG Illinois

and/or TCG Chicago. TCG provides, among other things, telephone exchange service, exchange access and other telecommunications services in the State of Illinois. TCG is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of §§ 251(a) and 252(a) of the Act.

8. Defendant WorldCom Technologies, Inc. is a corporation organized under the laws of Georgia. It is a successor in interest to MFS Intelenet of Illinois, Inc. ("MFS"). MFS is a corporation organized under the laws of the State of Delaware. It provides, among other things, telephone exchange service, exchange access and other telecommunications services in the State of Illinois. "MFS" is used throughout this Complaint to refer to WorldCom Technologies, Inc. and/or MFS Intelenet of Illinois, Inc. MFS is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of §§ 251(a) and 252(a) of the Act.

9. AT&T Communications of Illinois, Inc. ("AT&T") is a corporation organized under the laws of the State of Illinois. AT&T is a wholly-owned subsidiary of AT&T Corp., which, through its operating subsidiaries, provides long distance telecommunications service, telephone exchange service, exchange access and other telecommunications services in the State of Illinois. AT&T is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of §§ 251(a) and 252(a) of the Act.

10. Focal Communications Corporation of Illinois ("Focal") is a corporation organized under the laws of the State of Delaware. It provides, among other things, telephone exchange service, exchange access and other telecommunica-

tions services in the State of Illinois. Focal is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of §§ 251(a) and 252(a) of the Act.

11. The Commission is a "State commission" within the meaning of §§ 251 and 252 of the Act.

12 Defendants Dan Miller, Richard Kolhauser, Ruth Kretschmer, Karl McDermott, and Brent Bohlen are Commissioners of the ICC. They are named as Defendants in their official capacities, and not as individuals.

BACKGROUND

The Telecommunications Act of 1996

13. The federal Telecommunications Act of 1996 (47 U.S.C. § 151 et seq.) was the culmination of efforts over several years by legislators and telephone companies, including Ameritech Illinois, to open up, on a nationwide basis, the market for all types of telephone service, including local exchange service, exchange access and long distance, to full, fair, and effective competition. Sections 251 and 252 of the Act establish, among other things, the requirements and process by which competing local exchange carriers ("competing LECs") may interconnect with and gain access to the networks, facilities and services of incumbent LECs, such as Ameritech Illinois, in order to provide competitive local exchange service and exchange access. Sections 251 and 252 also impose certain obligations on the competing LECs.

14. Section 252 of the Act sets forth the procedure by which a competing LEC may arrive at an agreement with an incumbent LEC for the performance of the duties established

in § 251. To begin the process, the competing LEC asks to negotiate an interconnection agreement with the incumbent LEC. (47 U.S.C. § 252(a)(1).) The parties may arrive at an agreement through negotiations alone. (Id.) Alternatively either party to the negotiation may petition the State utility commission to arbitrate any "open issues" regarding the interconnection agreement. (47 U.S.C § 252(b)(1).) The State commission then arbitrates and rules on the open issues. (47 U.S.C. § 252(b)(4)(C).)

15. The parties submit to the State commission for approval any agreement they arrive at, whether through arbitration or negotiation. (47 U.S.C. § 252(e)(1).) The State commission then approves or rejects the agreement, in accordance with standards set forth in the Act. (47 U.S.C. § 252(e)(2).) After the State commission approves or rejects the agreement, § 252(e)(6) provides for federal court review of the State commission's determinations. Similarly, the State commission is empowered to enforce the agreements it approves, again subject to federal court review. Iowa Utils. Bd. v. FCC, 120 F.3d 753, 791 (1997), cert. granted sub nom. AT&T Corp. v. Iowa Utils. Bd., 66 U.S.L.W. 3490 (U.S. Jan. 26, 1998) (No. 97-826).

The Agreements and Their Reciprocal Compensation Provisions

16. In 1996, Ameritech Illinois entered into negotiations for separate interconnection agreements with each of the Carrier Defendants. In each instance, an agreement was reached, either through negotiation or arbitration. These Agreements between Ameritech Illinois and MFS, TCG, AT&T, Focal, and MCI were approved by the ICC, respec-

tively, on July 30, 1996 and August 7, 1996 (MFS); January 8, 1997 (TCG); January 8, 1997 (AT&T); February 20, 1997 (Focal); and April 28, 1997 (MCI).

17. Section 251(b)(5) of the Act provides that all local exchange carriers ("LECs") have the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." If a customer of LEC X makes a local call to a customer of LEC Y in the same service area, LEC X hands off the call to LEC Y at a point where the two carriers' networks are interconnected, and LEC Y then "transports" the call from that point to the switch that serves its customer, which then switches the call to that customer's local loop, on which the call is "terminated" to the customer. The calling party pays LEC X for the call, and LEC X pays "reciprocal compensation" to LEC Y for transporting and terminating the call to its customer.

18. Reciprocal compensation applies only to "local telecommunications traffic," which is traffic that originates and terminates within a local service area established by the state commission. The Federal Communications Commission ("FCC") confirmed this in a regulation it promulgated to implement the requirements of the Act. 47 C.F.R. § 51.701(a), (b)(1).

19. Accordingly, all of the Agreements provide that only "Local Traffic" which terminates on the "other Party's network" is eligible for reciprocal compensation:

> Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or [the Carrier defendant] which a Telephone Exchange Service Customer originates on Ameritech's or [the Carrier Defendant's] network for termination on the other Party's network.

(MFS agreement, § 5.8.1; TCG Agreement, § 5.6.1; MCI Agreement, § 4.7.1; AT&T Agreement, § 4.7.1; Focal Agreement, § 5.8.1).

20. The Agreements define "Local Traffic" as "a call of which the distance is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the terminating NXX, or as otherwise determined by the FCC or the Commission for purposes of Reciprocal Compensation" (MFS agreement, § 1.38; MCI Agreement, sch. 1.2; AT&T Agreement, sch. 1.2; Focal Agreement, § 1.46) or as "local service area calls as defined by the Commission" (TCG Agreement, § 1.43).

21. Customers of a LEC make use of the same local network facilities when they make other, non-local types of calls, including regular long distance calls, calls to 800 numbers, so-called Feature Group A calls, and the Internet ISP Calls. Taking regular long distance calls as an example, long distance carriers typically do not have their own local facilities. When a long distance call is made, the calling party's LEC transports the call across its network to a point of interconnection with the long distance carrier; the long distance carrier transports the call across its network to a point of interconnection with the LEC that serves the called party; and the call is completed over the second LEC's network. The service provided by the two LECs delivering traffic from the calling party to the long distance carrier (origination) and from the long distance carrier to the called party (termination) is called "exchange access," and the long distance

carrier pays "access charges" to the originating LEC and the terminating LEC.

22. The Agreements are identical in emphasizing that "Exchange Access" traffic is not eligible for reciprocal compensation:

> The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. All Switched Exchange Access Service and all IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

(MFS Agreement, § 5.8.3; TCG Agreement, § 5.6.2; MCI Agreement, § 4.7.2; AT&T Agreement, § 4.7.2; Focal Agreement, § 5.8.2.)

23. The Agreements define "switched exchange access service" as:

> [T]he offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access services.

(TCG Agreement, § 1.65; MFS Agreement, § 1.56; MCI Agreement, sch. 1.2.; AT&T Agreement, sch. 1.2; Focal Agreement, § 1.66.)

The Nature of the Internet ISP Calls

24. An "Internet service provider" (or "ISP") is an entity that provides its customers the ability to obtain on-line information through the Internet by communicating with "web sites" or termination points located on the Internet, each of which has its own unique address and physical location. The ISP connects to the public switched telephone network in order to offer its Internet communications service to end users.

25. When an ISP is providing the service described in the preceding paragraph, the ISP is not itself an end user of the network, but is an interstate service provider, offering its service to end users. Unlike local calls to residential and business subscribers, a call from an end user through an ISP does not terminate at the ISP. Rather, the ISP is an intermediary in the provision of an interexchange, end-to-end communication. The ongoing transmission of communications transported via the ISP is typically routed from the ISP's local point of presence to distant data centers or Internet localities beyond state and federal boundaries. The ISP thus acts as an intermediary for the provisioning of data-type intrastate, interstate and international communications.

26. In addition to the intrastate, interstate, and international transmission of data, software is available that permits two-way voice calls over the Internet, and therefore end-users making voice calls may bypass toll and access charges when communicating via an ISP. This use of the Internet for interstate voice communications, via ISPs, is increasing. The ISP end user may make a voice or data call to virtually anywhere in the world.

The Internet ISP Calls Are Not Local Calls

27. Whether telecommunications traffic is local or not is defined by the points of origin and termination of the communication. As noted above, the Agreements provide that a call is not "local" unless it originates and terminates within a local service or calling area. Further, section 251 of the 1996 Act, as interpreted by the FCC, defines local traffic as traffic that "originates and terminates within a local service area ..."

28. Unlike "local traffic" as defined by the Agreements and by the Act, the Internet ISP Calls do not originate and terminate within a "local calling area" or within a "local service area." The Internet ISP Calls originate with an end user and terminate at the Internet databases, information sources or other destinations made available by the ISP. Because these destinations are almost always outside the local service area (and indeed are generally located outside the State of Illinois), the Internet ISP Calls are not local and therefore not subject to reciprocal compensation.

The Internet ISP Calls Are Exchange Access Calls

29. As set forth above, the Agreements define "Switched Exchange Access Services" as including "Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access services."

30. The Internet ISP Calls are Switched Exchange Access Services under the Agreements because they are "similar" to some or all of the services expressly enumerated. As with the enumerated services, the calling party's call is transported across the local network to a point of interconnection

with the ISP, and the ISP, in turn, transports the call to its ultimate interstate or international destination. In other words, the calling party uses the local network to obtain "access" to distant locations, via a service provider that has a point of interconnection with the local network. As with other exchange access services, the ISP acts as an intermediary in the provision of an interexchange, end-to-end communication.

The FCC Has Concluded That The Internet ISP Calls Are "Exchange Access," Not "Local"

31. On several occasions, the FCC has considered whether the Internet ISP Calls are "local." The FCC has never classified the Internet ISP Calls as local traffic. Instead, the FCC has recognized that this traffic is "exchange access" traffic.

32. The FCC's classification of the Internet ISP Calls as "exchange access" traffic dates back to the inception of the access charge regime in 1983. At that time, the FCC initially held that ISPs would be subject to access charges. On reconsideration, however, the FCC granted the ISPs an exemption from such charges, due to the high costs of exchange access at the time, and the FCC's desire to protect the fledgling information services industry from rate shock. MTS and WATS Market Structure, 97 FCC 2d. 682, 711 (1983).

33. If the FCC had ever considered the Internet ISP Calls to be "local," it would not have exempted such calls from access charges, because interstate access charges could not have lawfully been imposed in the first place.

The Current FCC Proceedings

34. On June 20, 1997, the Association for Local Telecommunications Services ("ALTS") initiated FCC Docket CCB/CBD 97-30 (the "FCC Docket"). Exhibit C. ALTS requested an expedited FCC ruling that the Internet ISP Calls be treated as local calls, rather than exchange access calls, by any and all LECs involved in carrying those calls.

35. ALTS specifically acknowledged that its request "is plainly within the [FCC's] exclusive jurisdiction." Id. It notified the FCC that complaints regarding the Internet ISP Calls had been filed in Connecticut and New York, and urged the FCC to act "promptly to preclude the jurisdictional confusion that inconsistent state actions could produce." Id.

36. On information and belief, defendants Focal, MFS and MCI are members of ALTS.

37. Pursuant to FCC procedures, Ameritech Illinois and the Carrier Defendants have filed Comments and/or Reply Comments in the FCC Docket. The comment cycle at the FCC is now complete.

The Underlying ICC Proceedings

38. After the comment cycle in the FCC was complete, three of the carriers who are now defendants in this action filed individual complaints against Ameritech Illinois before the ICC seeking to obtain money that they alleged was due them as "reciprocal compensation" for the Internet ISP Calls. A Hearing Examiner consolidated the three separate complaints into one proceeding, and subsequently granted AT&T and Focal leave to intervene in the consolidated proceeding.

39. The ICC held hearings and received testimony pertaining to the Internet ISP Calls on September 25, 1997, October 9, 1997, and November 21, 1997. On March 11, 1998, the ICC issued the ICC Order, in which it erroneously concluded that the Agreements require Ameritech Illinois to pay the Carrier Defendants reciprocal compensation for the Internet ISP Calls. The ICC Order requires that Ameritech Illinois (1) pay the amounts, plus interest, associated with the Internet ISP Calls; and (2) resume payment of reciprocal compensation with respect to Internet ISP Calls in the future. The ICC's Order is erroneous as a matter of law, contrary to the express terms of the Agreements and to the controlling orders of the FCC, and in violation of federal law.

COUNT I

The Commission's Interpretation Of The Agreements Is Erroneous As A Matter of Law

40. Ameritech Illinois realleges and incorporates Paragraph 1 through 39 as if fully set forth herein.

41. As noted above, the Agreements define Switched Exchange Access Service to "include . . . Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access services."

42. The Internet ISP Calls are a "Switched Exchange Access Service" as defined by the Agreements, because they are "similar" to one or more of the enumerated services. As with the enumerated services, the calling party's call is transported across the local network to a point of interconnection with the ISP, and the ISP, in turn, transports the call

to its ultimate interstate or international destination. In other words, the calling party uses the local network to obtain "access" to distant locations, via a service provider (in this instance, an ISP) that has a point of interconnection with the local network.

43. Notwithstanding the Agreements' inclusion of "similar Switched Exchange Services" -- in addition to those services listed by name -- the ICC disregarded that language and ruled, as a matter of law, that the Internet ISP Calls did not constitute exchange access traffic.

44. The ICC's Order is contrary to the express and unambiguous terms of the Agreements. The ICC's Order is erroneous as a matter of law.

45. Ameritech Illinois is entitled to a declaration that the ICC's Order is invalid and to an injunction against enforcement of the Order.

COUNT II

The ICC Order Is Contrary To Controlling FCC Orders

46. Ameritech Illinois realleges and incorporates Paragraphs 1 through 45 as if fully set forth herein.

47. The FCC has determined that the Internet ISP Calls constitute exchange access traffic rather than local traffic.

48. As a matter of law, the term "Switched Exchange Access Services," among other terms in the Agreements, is a term of art that incorporates applicable federal statutory definitions and the FCC's rulings as to the types of traffic that constitute "exchange access."

49. Despite the FCC's rulings that the Internet ISP Calls are exchange access traffic, the ICC Order holds that the Internet ISP Calls are not exchange access traffic, but local traffic.

50. The ICC's Order is contrary to governing federal law, and its interpretation of the Agreements, which incorporate governing federal law, is erroneous as a matter of law.

51. Ameritech Illinois is entitled to a declaration that the Order is invalid and to an injunction against enforcement of the Order.

COUNT III

The ICC's Order Violates Controlling Federal Law, Which Assigns Authority Over Interstate Communications To The FCC

52. Ameritech Illinois realleges Paragraphs 1 through 51 as if fully set forth herein.

53. The Communications Act of 1934 creates two distinct spheres of regulation. It reserves to the States exclusive jurisdiction over intrastate communications, and it assigns to the FCC authority over, and responsibility for, interstate communications.

54. In virtually all instances, the Internet ISP Calls are not intrastate communications, but rather are interstate communications.

55. The ICC violated federal law, and the principle of jurisdictional separation, by requiring Ameritech Illinois to pay reciprocal compensation with respect to the Internet ISP Calls.

56. Ameritech Illinois is entitled to a declaration that the Order is invalid and to an injunction against enforcement of the Order.

COUNT IV

The ICC Order Violates Sections 251(b)(5), 252(d)(2) and 251(g) of the 1996 Act

57. Ameritech Illinois realleges and incorporates Paragraph 1 through 56 as if fully set forth herein.

58. The ICC's Order requires Ameritech Illinois to pay reciprocal compensation on the Internet ISP Calls. However, the ICC does not have the power, under the 1996 Act, to grant such reciprocal compensation.

59. The controlling federal law which establishes the scope of an incumbent LEC's obligation to pay reciprocal compensation pursuant to interconnection agreements entered into under the Act does not permit the ICC to require Ameritech Illinois to pay reciprocal compensation for Internet ISP Calls. Specifically, Sections 251(b)(5) and 252(d)2 of the Act limit Ameritech Illinois' obligation to pay reciprocal compensation under such interconnection agreements to local calls that terminate on the other local carriers' network. Internet ISP Calls are not local calls under the Act.

60. In addition, Section 251(g) of the 1996 Act provides in pertinent part:

> (g) Continued enforcement of exchange access and interconnection requirements --- On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996 and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission. (Emphasis added.)

61. Under § 251(g), each local exchange carrier must, as of today, provide exchange access, information access, and exchange services for such access to ISPs in accordance with the same restrictions and obligations, including receipt of compensation, that applied to that carrier on February 7, 1996 (the date immediately preceding the date of enactment of the 1996 Act).

62. As of February 7, 1996, no court order, consent decree, or regulation, order, or policy of the FCC provided for the payment of reciprocal compensation in connection with the provision of the enumerated services. Therefore, reciprocal compensation does not now apply to the provision of exchange access, information access, or exchange services for such access to ISPs. Reciprocal compensation would apply in the future if and only if the FCC were to expressly so require.

COUNT V

The ICC Order Must Also Be Set Aside Under Illinois Law.

63. Ameritech Illinois realleges and incorporates Paragraph 1 through 62 as if fully set forth herein.

64. Under Illinois law, a party aggrieved by a determination of the ICC may obtain judicial review of that determination. The reviewing court may set aside the ICC's determination if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

(a) Not supported by substantial evidence based on the entire record of evidence presented to or before the ICC.

(b) Without the jurisdiction of the ICC.

(c) In violation of the State or federal constitution or laws.

(d) Made upon proceedings or manner in violation of the State or federal constitution or laws, to the prejudice of the appellant.

65. This Court may exercise supplemental jurisdiction over Ameritech Illinois's state-law claim for judicial review of the ICC determination, because it forms part of the same case or controversy as the federal claims set forth herein.

66. For all of the reasons set forth in the paragraphs and Counts above, the ICC Order is not supported by substantial evidence based on the entire record; without the ICC's jurisdiction; in violation of State and/or federal laws; and made

upon proceedings or manner in violation of State and/or federal laws, to the prejudice of Ameritech Illinois.

PRAYER FOR RELIEF

For the foregoing reasons, Ameritech Illinois respectfully requests this Court to:

1) Declare that the term "Local Traffic" as used in the Agreements does not include the Internet ISP Calls;

2) Declare that the Internet ISP Calls are not subject to the payment of reciprocal compensation;

3) Issue an injunction against enforcement of the ICC's Order; and

4) Award any other relief that this Court deems just and proper.

Respectfully submitted,

ILLINOIS BELL TELEPHONE
COMPANY d/b/a AMERITECH ILLINOIS

By

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APPENDIX G - OPINION OF THE DISTRICT COURT, JULY 21, 1998.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Illinois Bell Telephone Company d/b/a Ameritech Illinois,
Plaintiff,

v.

WorldCom Technologies, Inc. as a successor in interest to MFS Intelenet of Illinois, Inc., Teleport Communications Group Inc., MCI Telecommunications Corporation and MCIMetro Access Transmission Services, Inc., AT&T Communications of Illinois, Inc., and Focal Communications Corporation

and

Dan Miller, Richard Kolhauser, Ruth Kretschmer, Karl McDermott, and Brent Bohlen, Commissioners of the Illinois Commerce Commission (in their official capacities and not as individuals),

Defendants.

No. 98 C 1925.

[July 21, 1998]

Judge David H. Coar

MEMORANDUM OPINION AND ORDER

Plaintiff Illinois Bell Telephone Co. d/b/a/ Ameritech Illinois ("Ameritech") has filed the instant suit challenging the Illinois Commerce Commission's ("ICC" or "the Commission") determination that Internet calls are "local traffic" as defined by Interconnection Agreements between Ameritech and several of the defendants, and therefore subject to reciprocal compensation. Ameritech contends that the ICC's decision violates the Telecommunications Act of 1996. A hearing on the merits of the case was held by this court on June 25, 1998. As set forth in this Memorandum Opinion and Order, this court upholds the ICC's decision.

I. PROCEDURAL HISTORY

In 1996, plaintiff Ameritech entered into negotiations for separate Interconnection Agreements with five of the defendants in this case, Teleport Communications Group, Inc. ("TCG"), WorldCom Technologies, Inc. ("WorldCom"), MCI Telecommunications Corporation and MCIMetro Access Transmission Services, Inc. ("MCI"), AT&T Communications of Illinois, Inc. ("AT&T"), and Focal Communications Corporation ("Focal") (collectively the "Carrier defendants"). (Compl. ¶ 16.) In 1996 and 1997 each of the Agreements was approved by the Illinois Commerce Commission ("ICC" or "the Commission"). On September 8, 1997, one of the Carrier defendants, TCG, filed a complaint against Ameritech alleging that Ameritech had violated the terms of its Interconnection Agreement by refusing to pay TCG reciprocal compensation for local calls originated by end users on Ameritech Illinois' network and terminated to Internet Service Providers ("ISPs") on TCG's network. (Order at 2.) On October 9 and 10, 1997, WorldCom and MCI

filed similar complaints against Ameritech, and the three cases were consolidated on November 4, 1997. (Order at 2.) Subsequently, petitions to intervene were granted as to Focal, AT&T, and others. (Order at 2.)

On March 11, 1998, the ICC entered an Order incorporating factual findings regarding the Carrier defendants' complaints and concluding that Ameritech had violated its Interconnection Agreements. On March 27, 1998, Ameritech filed the instant suit against the Carrier defendants and the Commissioner of the Illinois Commerce Commission ("the Commissioners") seeking review in federal court of the ICC's March 11 Order pursuant to Section 252(e)(6) of the Telecommunications Act of 1996 and 28 U.S.C. § 1331. Ameritech's five-count complaint alleges that the ICC's order is contrary to governing federal law.[1] As relief, Ameritech requests this court to declare that the term "local traffic" as used in the Agreements does not include Internet ISP calls, declare that the ISP calls are not subject to the payment

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[1] Count I alleges that the Commission's interpretation of the Agreements is erroneous as a matter of law because, pursuant to the Agreement, the Internet ISP calls are switched exchange access service. (Compl. 40-45.) Count II alleges that the ICC order is contrary to controlling FCC orders which hold that Internet ISP calls are exchange access traffic. (Compl. 46-51.) Count III alleges that the ICC's order violates controlling federal law which assigns authority over interstate communications to the FCC. (Compl. 52-56.) Count IV alleges that the ICC order violates sections 251(b)(5), 252(d)(2), and 251(g) of the 1996 Act. (Compl. 57-62.) Finally, Count V alleges that the ICC order must be set aside under Illinois law. (Compl. 63-4.) Not all of the counts alleged in the complaint were presented to this court in the final briefing on the merits.

of reciprocal compensation, and issue an injunction against the enforcement of the ICC's order.

Ameritech also filed a motion for stay of the ICC's order pending review. On May 1, 1998, this court issued a stay of the Order pending expedited review of the case on the merits. The defendant Commissioners have filed two motions to dismiss the plaintiff's complaint. Due to the expedited nature of this proceeding, the Commissioners' motions are not yet fully briefed, and will therefore be reviewed in a subsequent decision of this court. At this court's suggestion, the instant Opinion and Order are without prejudice to the Commissioners' positions raised in the motions to dismiss.

II. BACKGROUND

A. THE TELECOMMUNICATIONS ACT OF 1996

The Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of Title 47 of the United States Code) (hereinafter "the Act" or "Telecommunications Act"), is intended to foster competition in local telephone service. The Act, which amends the Communications Act of 1934, works to open "all telecommunications markets through a pro-competitive, deregulatory national policy framework." *In Re Access Charge Reform Price Cap Performance Review for Local Exchange Carriers*, CC Dockets 96-262 et al., Third Report and Order, 11 F.C.C. Rcd. 21354, ¶ 2 (Dec. 24, 1996) (hereinafter "Third Report and Order"). *See generally MCI Telecommunications Corp. v. BellSouth Telecommunications*, Nos. 97 C 2225, 97 C 4096, 97 C 0886, 97 C 8285, 1998 WL 146678, at *1-2 (N.D. Ill. March 31, 1998); *GTE South, Inc. v. Morrison, Jr.*, 957 F. Supp. 800, 801-02 (E.D. Va. 1997). The Act preempts state and local barriers to market entry and requires new entrants into local telecommunication markets to be provided with access to telephone networks and services on "rates, terms, and conditions that are just, reasonable, and non-discriminatory." 47 U.S.C. § 251(c)(2)(D) (1998).

Under Sections 251 and 252 of the Act, incumbent Local Exchange Carriers ("LECs") and telecommunication carriers have the duty to negotiate in good faith the terms and conditions of agreements regarding facilities access, interconnection, resale of services, and other arrangements contemplated by the Act. *See id.* §§ 251(c), 252. Section 252 provides that parties may enter into agreements either voluntarily or through arbitration with a state public utility commission. If the parties are unable to reach an agreement voluntarily, either party may petition the state public utility commission for arbitration. *See id.* § 252(b)(1). A final interconnection agreement, whether negotiated or arbitrated, is reviewed by the state commission in order to determine whether it complies with the Act. *See id.* § 252(e)(1).

The Act further provides that any party that is "aggrieved" has the right to bring an action in federal court to challenge the terms of the interconnection agreement: "In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 250, of this title and this section." *Id.* § 252(e)(6). Courts have found that review by the federal courts under Section 252(e)(6) of the Act extends to "the various decisions made by [state commissions] throughout the arbitration period which later became part of the agreement . . ." *GTE South*, 957 F. Supp. at 804.

B. STANDARD OF REVIEW

The Telecommunications Act does not explicitly state the standard that federal district courts should apply when reviewing the decision of a state commission. The Supreme Court has held that in situations "where Congress has simply provided for review, without setting forth the standards to be used or the procedures to be followed . . . consideration is to be confined to the administrative record and . . . no *de novo* proceeding may be held." *United States v. Carlo Bianchi & Co.*, 373 U.S. 709, 715, 83 S. Ct. 1409, 1413 (1963) (citations omitted). Accordingly, review in the instant case is limited to the administrative record. *See, e.g., U.S. West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222WD, Slip Op. at 3 (W.D.Wash. Jan.7, 1998).

Courts that have examined the standard to be applied in appeals from state commissions have found that the language of Section 252(e)(6) clearly limits a court's jurisdiction to determining whether the agreement meets the requirements of federal law, in particular, the Telecommunications Act. *See, e.g., Southwestern Bell Tel. Co. v. Public Util. Comm'n*, No. 98 CA 043, Slip Op. at 9 (W.D. Tex. June 16, 1998) (*citing GTE Northwest, Inc. v. Hamilton*, 971 F. Supp. 1350, 1354 (D. Or. 1997)). District courts reviewing decisions of state commissions agree that the commissions' interpretations of federal law are reviewed *de novo*, while all other issues, including factual findings, are reviewed with substantial deference. *See, e.g., Southwestern Bell*, No. 98 CA 043 at 10-11; *U.S. West Communications, Inc. v. MFS Intelenet, Inc.*, No. C 97-222WD (W.D.Wash. Jan. 7, 1998); *GTE South*, 957 F. Supp. at 804; *U.S. West Communications, Inc., v. Hix*, 986 F. Supp. 13, 17 (D. Colo. 1997); *AT&T Communications of California, Inc. v. Pacific Bell*, No. C

97-0080, 1998 WL 246652, at *3 (N.D. Cal. May 11, 1998). Courts have reasoned that such a standard furthers the goals of the Telecommunications Act because state commissions have "little or no expertise in implementing federal laws and policies and do not have the nationwide perspective characteristic of a federal agency." *Hix*, 986 F. Supp. at 17.

This court agrees with the reasoning of the above-cited district courts regarding the standard of review for actions brought under the Telecommunications Act. In this two-tiered system of review, the court must first address whether the state commission's action in reviewing the interconnection agreements was procedurally and substantively in compliance with the Act and its regulations. *See Southwestern Bell*, No. 98 CA 043 at 10. If the court finds that the decision is consistent with federal law, the court must next determine whether the decision was arbitrary, capricious, or not supported by substantial evidence. *Id.* at 10-11. "Generally, an agency decision will be considered arbitrary and capricious if the agency had relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Hix*, 986 F. Supp. at 18 (*citing Friends of the Bow v. Thompson*, 124 F.3d 1210, 1215 (10th Cir. 1997)).

III. ANALYSIS

The case at bar is an issue of first impression for this court. Although one other district court, *Southwestern Bell Tel. Co. v. Public Util. Comm'n*, No. 98 CA 043, Slip Op. at 14-25 (W.D. Tex. June 16, 1998) (holding that calls to an

ISP are "local traffic" and therefore eligible for reciprocal compensation),[2] and state commissions in 19 states, (Carrier Def.'s Ex. 6), have determined that LECs must provide reciprocal compensation for calls to the Internet, no federal court in the Seventh Circuit has yet to answer this question.

This case involves the arcane regulatory and contractual question of the appropriate compensation for LECs that terminate Internet traffic. Ameritech argues that such calls are properly classified as "interstate"[3] exchange access calls and therefore no reciprocal compensation should apply. The Carrier defendants and the Commissioners argue that such calls are "local" and therefore require reciprocal compensation under the terms of the Interconnection Agreements. Some review of relevant terminology and technology is useful for understanding the issue at bar, in particular, the billing pro-

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[2] Another federal district court found, in reviewing an agreement approved by the Washington Utilities and Transportation Commission, that the state commission had not acted arbitrarily or capriciously in "deciding not to change the current treatment of ESP call termination from reciprocal compensation to special access fee." *U.S. West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222WD, Slip Op. at 8 (W.D. Wash. Jan. 6, 1998) ("ESPs" refers to "Enhanced Service Providers," which include Internet Service Providers.).

[3] The Federal Communications Commission has determined that interstate telecommunications occur "when the communication or transmission originates in any state, territory, possession of the United States, or the District of Columbia and terminates in another state, territory, possession, or the District of Columbia." *In re Federal-State Joint Board on Universal Service*, FCC 98-67, Report to Congress, CC Docket No. 96-45, 112 (April 10, 1998).

cedures for local and long distance calls, as well as the growing phenomenon of the Internet and Internet Service Providers.

A. RECIPROCAL COMPENSATION

Section 251(b)(5) of the Telecommunications Act provides that all LECs have a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." The corresponding regulations define "reciprocal" compensation as an "arrangement between two carriers . . . in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier." 47 C.F.R. § 51.701(e) (1998). The reciprocal compensation system functions in the following manner: a local caller pays charges to her LEC which originates the call. In turn, the originating carrier must compensate the terminating LEC for completing the call. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Dockets 96-98 et al., First Report and Order, 11 F.C.C. Rcd. 15499, ¶ 1034 (Aug. 8, 1996) (hereinafter "*First Report and Order*").

Reciprocal compensation applies only to "local telecommunications traffic." 47 C.F.R. § 51.701(a) (1998). Local telecommunications traffic is defined as traffic that "originates and terminates within a local service area established by the state commission." *Id.* § 51.701(b)(1). Ameritech argues that Internet calls are not properly classified as "local" calls under the Interconnection Agreements at issue. Therefore, according to Ameritech, payment of reciprocal compensation is improper.

B. ACCESS CHARGES

"Access charges" are the fees that long distance carriers, known as interexchange carriers ("IXCs"), pay to LECs for connecting the end user to the long distance carrier. "Access charges were developed to address a situation in which three carriers--typically, the originating LEC, the IXC, and the terminating LEC--collaborate to complete a long-distance call." *First Report and Order* ¶ 1034. Typically, the long-distance carrier will pay both the terminating and originating LEC an access charge. The service provided by the LECs is known as "exchange access." The 1996 Act defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(16) (1998).[4]

C. THE INTERNET

"The Internet is an international network of interconnected computers . . . . [which] enable[s] tens of millions of people to communicate with one another and to access vast amounts of information from around the world. The Internet is a unique and wholly new medium of worldwide human communication." *Reno v. American Civil Liberties Union*,--- U.S. ---, ---, 117 S. Ct. 2329, 2334 (1997) (footnote and internal citation omitted). The Internet functions by splitting up information into small chunks or "packets" that "are individually routed through the most efficient path to their destination . . ." *In re Federal-State Joint Board on Universal Service*, FCC 98-67, Report to Congress, CC Docket No. 96-45 (April 10, 1998) at ¶ 64 (hereinafter "*Universal Service Report*"). Despite the growing importance of the Internet in worldwide communications, "[t]he major components of the [Telecommunications Act] have nothing to do with the Internet." *Reno*, --- U.S. at ----, 117 S. Ct. at 2338.

[4] "Telephone toll service" is defined by the act as "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." 47 U.S.C. § 153(48) (1998).

D. INTERNET SERVICE PROVIDERS

An Internet Service Provider ("ISP") is an entity that provides its customers the ability to obtain on-line information through the Internet by communicating with web sites. ISPs function by combining "computer processing information storage, protocol conversion, and routing with transmission to enable users to access Internet content and services." *Universal Service Report* ¶ 63. If an ISP is in a local calling area, the ISP customer dials a seven-digit number to access the ISP facility and is generally charged a flat fee for the ISP usage, in addition to the corresponding local fee rate for the call to the ISP.[5] Among the services offered to many sub-

[5] Typically, when an individual calls the Internet the call is routed to a "dial-in site," "a small physical location (a phone closet for instance) that contains the electronic equipment needed to accept modem calls and connect them to" the Internet. Haran Craig Rashes, *The Impact of the Telecommunication Competition and the Telecommunications Act of 1996 on Internet Service Providers*, 16 Temp. Envtl. L. & Tech. J. 49, 69 (1997) (internal citations and footnote omitted.) "Each Internet Service Provider may place anywhere from one or two to thousands of incoming lines and modems in the same location. An Internet Service Providers' equipment at local dial-in sites consists of banks or pools of modems configured in multi-line hunt groups, with one lead number serving as a central number to receive calls." *Id.*

scribers to the Internet are electronic mail, file transfers, Internet Relay Chat, and the ability to browse and publish on the World Wide Web. *See, e.g., American Civil Liberties Union v. Reno*, 929 F. Supp. 824 (E.D.Pa.1996), *aff'd, Reno v. American Civil Liberties Union*, --- U.S. ---, 117 S. Ct. 2329 (1997).

ISPs have been exempted from paying "access charges" to LECs for connecting them to the end user. *Third Report and Order* ¶ 288. In 1983, the FCC classified ISPs as "end users" rather than as "carriers" for purposes of the access charge rules. Id. As a result of this decision, ISPs purchase services from LECs "under the same intrastate tariffs available to end users, by paying business line rates and the appropriate subscriber line charge, rather than interstate access rates." *Id.* ¶ 285. In a 1996 Order reviewing the 1983 "exemption" decision, the FCC "tentatively conclude[d] that the current pricing structure should not be changed so long as the existing access charge system remains in place." *Id.* 288.

E. TELECOMMUNICATIONS VS. INFORMATION SERVICES

The FCC has repeatedly made it clear that "telecommunications" and "information services" are "mutually exclusive" categories. *Universal Service Report* ¶ 59. *See also id.* ¶ 57 ("[W]e find strong support in the text and legislative history of the 1996 Act for the view that Congress intended 'telecommunications service' and 'information service' to refer to separate categories of services.") According to the FCC, such an interpretation is "the most faithful to both the 1996 Act and the policy goals of competition, deregulation, and universal service." *Id.* ¶ 59. The distinction drawn by the FCC mirrors the definitions of "telecommunications" and

"information services" in the Act. "Information service" is defined by the Telecommunications Act as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service." 47 U.S.C. § 153(20) (1998). "Telecommunication" however, is defined by the Act as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." *Id.* § 153(43).

Following the definitions in the Act, the FCC has found that the key distinction between telecommunications and information services rests on the functional nature of the end user offering. *Universal Service Report* ¶¶ 59, 86. "[I]f the user can receive nothing more than pure transmission, the service is telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service." *Id.* ¶ 59.

Applying these definitions, the FCC has determined that Internet services are "information services" and not "telecommunications." *See, e.g., Universal Service Report* ¶ 66 ("Internet service providers themselves provide information services, not telecommunications .."); *Id.* ¶ 80 ("The provision of Internet access service . . . is appropriately classed as an 'information service.' "); *Id.* ¶ 81 ("Internet access provider[s] . . . are appropriately classified as information service providers.").

There may be some rare instances, however, when the services provided by the Internet are actually telecommunications. For example, the FCC indicated in its recent report that "phone-to-phone telephony"[6] lacks the characteristics of information services, and could actually be classified as telecommunications services. *Id.* ¶ 89. However, the FCC reserved making any final ruling on the subject until a more complete record is established. *See id.* ¶ 90. *See generally* Robert M. Frieden, *Dialing for Dollars: Should the FCC Regulate Internet Telephony?*, 23 Rutgers Computers & Tech. L. J. 47 (1997) (discussing the various policy issues that may arise from the development of Internet telephony).

F. THE INTERCONNECTION AGREEMENTS

At the heart of this dispute are the Interconnection Agreements which were entered into between Ameritech and the various Carrier defendants. All of the Agreements provide that "local traffic" which terminates on the "other Party's network" is eligible for reciprocal compensation. Specifically, the Agreements state that:

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[6] In phone-to-phone telephony, "the customer places a call over the public switched telephone network to a gateway, which returns a second dial tone, and the signaling information necessary to complete the call is conveyed to the gateway using standard in-band (i.e., DMTF) signals on an overdial basis. The customer's voice or fax signal is sent to the gateway in unprocessed form (that is, not compressed and packetized). The service provider compresses and packetizes the signal at the gateway, transmits it via IP to a gateway in a different local exchange, reverses the processing at the terminating gateway and sends the signal out over the public switched telephone network in analog, or uncompressed digital, unpacketized form." *Universal Service Report* 84, n. 177.

> Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or [the Carrier defendant] which a Telephone Exchange Service Customer originates on Ameritech's or [the Carrier Defendant's] network for termination on the other Party's network.

(MFS § 5.8.1; TCG § 5.6.1; MCI § 4.7.1; AT&T § 5.7.1; Focal § 5.8.1.) The Agreements define "local traffic" as "local service area calls as defined by the Commission," (TCG § 1.43), or as:

> a call which is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the terminating NXX, or as otherwise determined by the FCC or Commission for purposes of Reciprocal Compensation; *provided* that in no event shall a Local Traffic call be less than fifteen (15) miles as so calculated.

(MFS § 1.38; MCI § 1.2; AT&T § 1.2; Focal § 1.46.) (emphasis in original). The Agreements further provide that "switched exchange access service" is not eligible for reciprocal compensation. (MFS § 5.8.3; TCG § 5.6.2; MCI § 4.7.2; AT&T § 4.7.2; Focal § 5.8.2). "Switched exchange access service" is defined in the Agreements as "the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service," which includes "Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access services." (MFS § 1.56; TCG § 1.65; MCI sch. 1.2; AT&T sch. 1.2; Focal § 1.66.)

The parties do not contend that the Agreements specifically classify the Internet as either local traffic or exchange access service. Indeed, this court could not find an express reference to the Internet in the various Interconnection Agreements.

G. THE COMMISSION'S DECISION

The Commission's Order concludes that Ameritech Illinois must pay reciprocal compensation to the Carrier defendants with respect to calls placed by Ameritech Illinois customers through the Internet via ISPs who are customers of the Carrier defendants.[7] In its decision, the Commission

[7] The Order states in the pertinent part:

> IT IS THEREFORE ORDERED that the interpretation of the interconnection agreements made in this order shall be effective from the dates of those interconnection agreements and that Ameritech Illinois shall henceforth pay each of the complainants all charges for reciprocal compensation for all calls which are within 14 miles and for that traffic that is billable as local from its customers to ISPs that are the customers of the complainants. Similarly, each competitive local exchange carrier shall pay Ameritech Illinois for all charges for reciprocal compensation for traffic that is billable as local from its customers to the ISPs that are customers of Ameritech Illinois.
>
> IT IS FURTHER ORDERED that within five business days of entry of this Order, Ameritech Illinois shall pay each of the competitive local exchange carriers all reciprocal compensation charges which have been withheld, with interest at the statutory rate. To the extend Ameritech Illinois billed the competitive local exchange carriers for reciprocal compensation and then later provided them with credits on their bills for ISP traffic, it shall resubmit bills to the competitive local exchange carriers for the credited amounts.
>
> (Order at 16.)

first reviewed the procedural history of the case and the positions of the parties. (Order at 1-10.) The Commission then presents a four-page analysis of the relevant facts and law for reaching its decision that reciprocal compensation applies to Internet calls.

The Commission's first reason for its decision is based on the language of the Agreements themselves. The Interconnection Agreements state that reciprocal compensation applies "for transport and termination of Local Traffic *billable* by Ameritech [or the Carrier defendant] which a Telephone Exchange Service Customer originates on Ameritech's [or the Carrier Defendant's] network for termination on the other Party's line." (MFS § 5.8.1; TCG § 5.6.1; MCI § 4.7.1; AT&T § 5.7.1; Focal § 5.8.1) (emphasis added). According to the Commission, the "billable" language in the Agreements "unambiguously provide[s] that reciprocal compensation is applicable to local traffic billable by Ameritech." (Order at 11.) Reasoning that Ameritech charges end users local service charges when completing calls that terminate at a competitor's ISP customer, the Commission concluded that "the plain reading" of the billable language necessitates reciprocal compensation charges for ISP calls. (Order at 11.)

The second rationale employed by the Commission is again dependent on the language of the Agreements. Specifically, the Agreements provide that reciprocal compensation

applies for calls *terminated* on the other party's line. (MFS § 5.8.1; TCG § 5.6.1; MCI § 4.7.1; AT&T § 5.7.1; Focal § 5.8.1) The Commission found that a call to an ISP *terminates* at the ISP before it is connected to the Internet. (Order at 11.) The Commission was persuaded by the Carrier defendants' definition of industry practice, in which call termination "occurs when a call connection is established between the caller and the telephone exchange service to which the dialed telephone number is assigned, and answer supervision is returned." (Order at 11, citing WorldCom Ex. 1.0 at 7.) According to the Commission, "termination" in the context of the Agreements does not mean that the call ends. (Order at 11.) The Commission's view of termination of the call leads to the conclusion that such calls are correctly classified as local calls under the Agreements.

In the final part of the Commission's analysis, it rejected the argument made by Ameritech that a call's distance must be determined on an "end-to-end" basis, that is, from the end user to the web site. Such a reading would be an "outdated conception of the telecommunications network" and would be inconsistent with the Act and "the FCC's own decisions." (Order at 11-12.) In a rather confusing explanation of this point, the Commission states that Internet calls are unlike Feature Group A ("FGA") calls, which are classified in the Agreements as "switched access service." FGA calls are long distance calls that end users initiate by dialing a local seven-digit number. When the user dials the local number, she is connected to the interexchange carrier's toll switch which gives the user a second dial tone, at which point the user dials a long distance number. Although Ameritech argued that FGA calls are functionally identical to Internet ISP calls, the Commission found that such calls are distinguish-

able because FGA calls undeniably involve telecommunications traffic with the end user to which the call is terminated. In contrast, Internet calls involve what the FCC has found to be "information services" after the call is terminated to the ISP. "Based on these critical distinctions [between telecommunication traffic and information service] the FCC has determined that ISP traffic is *not* an exchange access service, but rather, ISPs should be treated as 'end users.' " (Order at 12.) (emphasis in the original).

H. FCC RULINGS

This court's role in reviewing the ICC's decision requires that it examine the court's interpretation of federal law de novo. *See* discussion, *supra*, Part II.B. Examining the FCC's interpretation of the relevant issue is therefore necessary because if this court finds that the FCC has a reasonable and consistently held interpretation of the applicable law, those rulings would be entitled to substantial deference. *Cf. Arkansas v. Oklahoma*, 503 U.S. 91, 110, 112 S. Ct. 1046, 1059 (1992); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778 (1984). *See also Homemakers North Shore, Inc. v. Bowen*, 832 F.2d 408, 411 (7th Cir. 1987) ("An agency's construction of its own regulation binds a court in all but extraordinary cases."); *United States v. Baxter Healthcare Corp.*, 901 F.2d 1401, 1407 (7th Cir. 1990) (finding that a court must give great deference to agency's interpretations of its own regulations).

After reviewing relevant FCC precedent, this court finds that the FCC has not reached a coherent decision on the issue of the compensation of LECs providing Internet access. This result is due, in part, to the fact that the Internet, as a relatively new development to the telecommunications world,

presents unique questions that have not previously been addressed by FCC decisions and policy. For example, the FCC recently initiated a Notice of Inquiry seeking comments on the effect of the Internet and other information services on the telephone network, noting that the Internet creates perplexing policy issues:

> [T]he development of the Internet and other information services raise many critical questions that go beyond the interstate access charge system that is the subject of this proceeding. Ultimately, these questions concern no less than the future of the public switched telephone network in a world of digitalization and growing importance of data technologies. Our existing rules have been designed for traditional circuit-switched voice networks, and thus may hinder the development of emerging packet-switched data networks. To avoid this result, we must identify what FCC policies would best facilitate the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying voice network. In particular, better empirical data are needed before we can make informed judgments in this area.

Third Report and Order ¶ *311.*

This court's determination that no clear rule on the issue exists is confirmed by the fact that on June 20, 1997, the FCC expedited consideration of a request for clarification of its rules from the Association for Local Telecommunications. The issue under review is identical to the issue at bar: whether LECs are entitled to reciprocal compensation pursuant to section 251(b) of the Telecommunications Act for transport and termination of traffic to LECs that are information service providers. *See Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic*, Public Notice, FCC Common Carrier Bureau/CPD 97-30, 12 F.C.C. Rcd. 9715 (July 2, 1997). Thus, the precise issue under review in the instant case is currently being decided by the FCC. As of the date of this Memorandum Order and Opinion, the issue has not been resolved. *See also* Memorandum of the Federal Communications Commission as Amicus Curiae, Mem. at 2, June 29, 1998, *filed in Southwestern Bell*, No. 98 CA 043 (stating that the issue of the rights of LECs to receive reciprocal compensation is pending before the FCC in an administrative proceeding and remains unresolved). Any ruling by the FCC on that issue will no doubt affect future dealings between the parties on the instant case.

The Carrier defendants and the Commissioners argue that reciprocal compensation applies only to telecommunications, and, therefore, the fact that ISPs generally do not provide telecommunications necessitates a finding that reciprocal compensation must be paid to the terminating LEC. Ameritech responds, however, that such argument is a red herring. Ameritech relies heavily on the FCC's statement in its 1998 *Universal Service Report* that the issue of reciprocal compensation does not "turn on" the telecommunications/information service distinction:

> We make no determination here on the question of whether competitive LECs that serve Internet service providers (or Internet service providers that have voluntarily become competitive LECs) are entitled to re-

> ciprocal compensation for terminating Internet traffic. That issue, which is now before the Commission, does not turn on the status of the Internet service provider as a telecommunications carrier or information service provider.

¶ 106, n. 220. Although the statement of the FCC in Footnote 220 is ambiguous as it relates to the issues involved here, this court agrees with Ameritech to the extent that any rationale regarding whether reciprocal compensation must be paid for such calls cannot hinge entirely on the information service/telecommunications distinction. This does not mean, however, that the distinction does not exist[8] (*see* discussion, *supra*, Part III.E) or that an understanding of the distinction is wholly irrelevant to a discussion of the issue at bar.

Despite the fact that Ameritech shuns the information service/telecommunications distinction, it nonetheless argues that language in the FCC's reports indicating that Internet information services are provided *via telecommunications* is relevant to their argument. *See Universal Service* ¶ 68 ("Internet access, like all information services, is provided 'via telecommunications.' "); *Id.* ¶ 3 (stating that the Internet "stimulates our country's use of telecommunications"; ISPs are "major users of telecommunications."); *Id.* ¶ 15 ("[W]e clarify that the provision of transmission capacity to Internet access providers and Internet backbone providers is appropriately viewed as 'telecommunications service' or 'telecommunications.' "). Nonetheless, for the same reasons stated against the defendants' use of the distinction, this

[8] For example, at oral argument, counsel for the plaintiff clearly stated that it is "undisputed" that ISPs provide information services and are not providers of telecommunications. (Tr. at 31.)

court finds that the fact that ISPs use telecommunications is not the determining factor in the instant case.

Ameritech's reliance on language in the *Universal Service Report* indicating that the telecommunications backbone to the Internet is "interstate telecommunications" is more persuasive authority for of the plaintiff's view. *See, e.g., Universal Service Report* ¶ 55 ("We conclude that entities providing pure transmission capacity to Internet access or backbone providers provide *interstate* '*telecommunications*.' Internet service providers themselves generally do not provide telecommunications.") (emphasis added); *Id.* ¶ 67 ("The provision of leased lines to Internet service providers, however, constitutes the provision of *interstate telecommunications*. Telecommunications carriers offering leased lines to Internet service providers must include the revenues derived from those lines in their universal contribution base.") (emphasis added).

Although the characterization of leasing lines to local ISPs as providing "interstate telecommunications" causes this court to pause, ultimately this court is not convinced that such language compels a finding under federal law that a call from an end user to an ISP is an interstate call and that termination for billing purposes does not occur at the ISP. This court is especially skeptical of the above cited language from the *Universal Service Report* because of the context in which the term "interstate" is discussed. A great deal of the *Universal Service Report* discusses the future of the FCC's goal of providing "universal service," that is, services to all customers throughout the country, "including low-income customers and those in rural, insular, and high cost areas . . . at rates that are reasonably comparable to rates charged for similar service in urban areas." 47 U.S.C. § 254(b)(3)(1998). Under

the Telecommunications Act, carriers "that provide interstate telecommunications services must contribute to federal universal service mechanisms." *Universal Service Report* ¶ 55. A concern arises with the development of the Internet because, as information service providers, ISPs do not contribute directly to the development of universal service. *Id.*

Given this background, this court is not convinced that the use of the term "interstate" in the context of discussing the Internet means that the FCC has made a determination that calls to the Internet are "interstate" for billing purposes. Nor is this court persuaded that such statements would require the overturning of a state commission's finding that such calls terminate locally at the ISP. Instead, the FCC has only provided that those who lease lines to ISPs provide interstate telecommunications and therefore ISPs are contributing, albeit indirectly, to the goal of universal service. *Id.* In essence, by leasing their lines from telecommunications carriers that do contribute to the universal system, the ISPs are contributing to the continuation of the goal of universal coverage. *See id.* ¶ 68 ("Internet access, like all information services, is provided 'via telecommunications.' To the extent that the telecommunications inputs underlying Internet services are subject to the universal service contribution mechanism, that provides an answer to the concern . . . [that] there will no longer be enough money to support the infrastructure needed to make universal access to voice or Internet communications possible.") (footnote and internal quotations omitted).

The FCC has made statements acknowledging that calls to the Internet using a seven-digit number are "local." *See, e.g., In re Access Charge Reform*, First Report and Order, 12 F.C.C. Rcd. 15982, ¶ 342, n. 502 ("To maximize the

number of subscribers that can reach them through *a local call*, most ISPs have deployed points of presence.") (emphasis added). The FCC has also indicated that rate structures for such calls are appropriately addressed by state, rather than federal, regulators. *See id.* ¶ 345-46 ("ISPs do pay for their connections to incumbent LEC networks by purchasing services under state tariffs. Incumbent LECs also receive incremental revenue from Internet usage through higher demand for second lines by consumers, usage of dedicated data lines by ISPs, and subscriptions to incumbent LEC Internet access services. To the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators.") (emphasis added).[9]

Ameritech further argues, relying on decisions involving the creation of the access charge regime (*see* discussion, *supra*, Part III.B, III.D), that the FCC has ruled that

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[9] Ameritech states that most calls to ISPs are subject to flat (low) rate calls, and Internet calls tend to be longer than other types of calls. Under the current rate structure, Ameritech contends, if reciprocal charges are applicable to such charges, Ameritech must pay more to the terminating LEC than it can bill its customers. Implicit in Ameritech's argument is the assertion that the reciprocal payments thus incurred far exceed the cost to the LEC for terminating the call. If that is true, it is unclear how the state regulators can adequately restore equity to the process except through some bifurcation which would assign a different reciprocal rate to ISP traffic. Merely raising the rates that the originating LEC charges its local customers would simply finance a windfall for the terminating LEC out of the pocketbooks of customers.

Internet Calls are exchange access calls. For example, in 1983 the FCC stated that:

> Other users who employ exchange service for jurisdictionally interstate communications, including private firms, enhanced service providers, and sharers, who have been paying the generally much lower business service rates, would experience severe rate impacts were we immediately to assess carrier access charges upon them. . . . Were we at the outset to impose full carrier usage charges on enhanced service providers and possibly sharers and a select few others who are currently paying local business exchange service rates for their interstate access, these entities would experience huge increases in their costs of operation which could affect their viability.

MTS and WATS Market Structure, 97 F.C.C.2d 682, ¶ 78 (1983). Although the FCC has continued to uphold its ruling that ISPs are exempt from any access charges (*see, e.g., Universal Service Report* ¶ 146), the FCC has clarified its position in more recent rulings. In particular, the FCC has stated that due to "the evolution in ISP technologies and markets since we first established access charges in the early 1980s, it is not clear that ISPs use the public switched network in a manner analogous to IXCs. Commercial Internet access, for example, did not even exist when access charges were established." *In the Matter of Access Charge Reform*, First Report and Order, CC Docket Nos. 96-262 et al., FCC 97-158, ¶ 345 (May 16, 1997). Indeed, instead of classifying ISPs as IXCs, the FCC has maintained that ISPs are, and should remain, classified as end users. *Id.* ¶ 348. Furthermore, the FCC has concluded, at least "tentatively," that the current structure of charging ISPs as end users should "not be changed so long as

the existing access charge system remains in place." *Third Report and Order* ¶ 288.

In conclusion, this court finds that at the time that the Agreements were entered into there was no clear FCC position on whether or not calls to Internet ISPs are interstate exchange access calls. The FCC is currently reviewing the very question at issue in this case. Accordingly, the answer to the question of the interpretation of the Agreements lies principally in contract interpretation. These are questions that this court must review with substantial deference to the ICC's findings.

I. FINAL ANALYSIS OF ICC DECISION

The ICC's decision states three reasons for rejecting Ameritech's argument. This court finds that the third reason, which is based principally on the information services/telecommunications distinction, is not relevant to the case at bar. (*See* discussion, *supra*, Part III.H.) However, as the third reason does not include incorrect statements of federal law and this court finds that the remaining two reasons stated in the Commission's opinion are sufficient to uphold the decision, Ameritech's request that the decision be set aside is rejected.

The third section of the ICC's analysis is less clear than the other two arguments. Indeed, the third argument is jumbled and difficult to decipher. Without clearly linking its reasoning to its decision to uphold reciprocal compensation for Internet calls, the ICC states in one stream of reasoning (encompassing only one page of text) that: (1) end-to-end jurisdiction is "outdated"; (2) FGA calls are distinguishable from Internet calls; (3) the Internet provides "information services" and not "telecommunications"; and, (4) ISPs are

not exchange access service, but rather "end users." (Order at 11-12.) In fact, this section of the Commission's opinion reads more like a selective review of FCC precedent than solid reasoning for supporting reciprocal compensation for Internet calls.

For the reasons already discussed, this court finds that these statements of the Commission, though overstated, are not expressly violative of existing federal law. However, to the extent that this portion of the Commission's decision relies heavily on the distinction between information service and telecommunications, this court rejects that analysis. The FCC has warned that this distinction, although it does exist, is not the answer to whether the LEC is entitled to reciprocal compensation for terminating Internet traffic. *See Universal Service Report* ¶ 106, n. 220. Nonetheless, the Commission's analysis does not "turn on" this distinction. Furthermore, as the decision stands on its own based on the first two rationales, this court does not find that the Commission's discussion of the information service/telecommunications distinction provides a basis for reversal.[10]

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[10] Ameritech also criticizes the ICC's use of the distinction with Feature Group A calls ("FGA"), which is mentioned in the ICC's highlighting of the information service/telecommunications distinction in the third portion of its analysis. Ameritech stresses the point that FGA calls are "functionally and technically" indistinguishable from an Internet call. (Ameritech Merits Brief at 10.) However, Ameritech does not cite a single statute or ruling in support of this view. Although it may be appealing to analogize the two types of calls as functionally similar, this court will not be swayed by such argument. As previously discussed, a special provision in the Interconnection Agreements explicitly excludes FGA calls from paying reciprocal compensation. No such exception is provided for Internet calls.

Close analysis of the remaining two rationales reveals that such reasoning is consistent with federal law and is supported by substantial evidence. These two arguments are: (1) the Agreements use of the word "billable" requires reciprocal compensation for Internet traffic because Ameritech bills such calls as local; and, (2) the industry use of the word "terminates" requires a finding that the call to the ISP terminates at the ISP.

First, the "billable" rationale is a reasonable interpretation of the contracts. Ameritech argues that such a reading is wrong as a matter of law, contending that the Agreements define local traffic based not on billing treatment, but on points of origin and termination of the traffic. (Ameritech Resp. at 14.) Ameritech further informs that the billing practice for Internet calls is identical to the billing treatment of FGA calls, and therefore the Commission's holding would make FGA calls "local." Ameritech does not cite any cases to support this proposition. Furthermore, Ameritech ignores the fact that the Agreements specifically exclude FGA calls from the reciprocal compensation provision. No such explicit provision is found in the Agreements regarding Internet calls. In fact, the Internet and ISPs are not even mentioned in the Agreements. No doubt the next time Interconnection Agreements are negotiated between the parties such a provision regarding the termination of Internet calls will be the subject of vigorous discussion. However, this court will not impose such a provision into the Agreements as written.

Although reasonable persons may differ on the interpretation of the language of the Agreements, a finding that calls that are billed as local must receive reciprocal compensation is not violative of current federal law. Furthermore, such a finding is a reasonable interpretation of the contracts and is neither arbitrary nor capricious. It is undeniable that Ameritech has consistently billed its customers for their calls to ISPs as local calls. This court therefore concurs with the ICC's conclusion that the Ameritech billing scheme warrants a finding that such calls are subject to reciprocal compensation.

Second, this court finds that the ICC's determination that calls to the ISP terminate at the ISP is not contrary to federal law and is supported by substantial evidence. Ameritech's argument that federal law requires that this court adopt a "jurisdictional" standard for termination that would be measured on an "end-to-end" basis is not convincing. Although Ameritech is correct that "end-to-end" language is used in some earlier FCC decisions in different contexts,[11] the FCC has not issued any rulings indicating that

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[11] *See, e.g., Southwestern Bell Tel. Co. Transmittal Nos. 1537 & 1560 Revisions to Tariff F.C.C. No. 68*, Order Designating Issues for Investigation, 3 F.C.C. Rcd. 2339, ¶ 28 (1988) (rejecting the view that two calls are created by the use of a 1-800 number for a credit card call and stating that "[s]witching at the credit card switch is an intermediate step in a single end-to-end communication."); *Petition for Emergency Relief and Declaratory Ruling Filed by the Bellsouth Corporation*, 7 F.C.C. Rcd. 1619, 1619-21 (1992) (finding that a call to an out-of-state voice mail service is a single interstate communication); *Long-Distance/USA, Inc.*, 10 F.C.C. Rcd. 1634, ¶ 13 (1995) (finding that 1-800 calls are a single communication; "both court and Commission decisions have consistently held that the communications path is no more significant than the facilities used to complete such communications").

Internet calls must be measured on an end-to-end basis, with the ultimate web site qualifying as one "end." Furthermore, all of the cases cited by the plaintiff in support of its end-to-end argument are from the pre-1996 Act era. (*See* Ameritech Mem. at 17-18.)

Instead of classifying the web sites as the jurisdictional end of the communication, the FCC has specifically classified the ISP as an end user. *See, e.g., Third Report and Order* ¶ 288. Given the absence of an FCC ruling on the subject, this court finds it appropriate to defer to the ICC's finding of industry practice regarding call termination. Indeed, the Internet Agreements themselves authorize the Commission to determine when a call qualifies as "local."[12]

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[12] TCG's Agreement provides that "local traffic" is "local service area calls as defined by the Commission." (TCG § 1.43.) The Agreements of the other Carrier defendants provide that a "local call" is:

> a call which is fifteen (15) miles or less as calculated by using the V&H coordinates of the originating NXX and the V&H coordinates of the terminating NXX, or as otherwise *determined by the FCC or Commission* for purposes of Reciprocal Compensation; provided that in no event shall a Local Traffic call be less than fifteen (15) miles as so calculated.

(MFS § 1.38; MCI § 1.2; AT&T § 1.2; Focal § 1.46.) (emphasis added).

The ICC's decision included the following finding of fact regarding call termination:

> [W]e are persuaded by Mr. Harris' explanation of industry practice with respect to call termination. He testified that call termination within the public switched network "occurs when a call connection is established between the caller and the telephone exchange service to which the dialed telephone number is assigned . . ."

(Order at 11.) This definition of "termination"[13] is crucial to understanding the meaning of the Agreements, as the Agreements specifically use the word termination in defining reciprocal compensation. When a customer of a LEC dials the ISP's local, seven-digit number, the customer is connected to the ISP. Once this "call connection" is established between the caller and the telephone exchange service of the seven-digit number, the call is deemed "terminated" for purposes of the Agreements. The fact that the ISP then connects the user to the Internet, where the user may access unlimited web sites, does not alter the fact that the call has

[13] The ICC's definition of "termination" closely follows that adopted by the ICC. *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 1040 (Aug. 8, 1996) ("We define 'termination,' for purposes of section 251(b)(5) [the reciprocal compensation provision of the Telecommunications Act], as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises.").

been "terminated" at the ISP for purposes of reciprocal compensation.

J. THE ICC ORDER VIOLATES SECTION 251(G) OF THE ACT

Ameritech's final argument is that the ICC's order violates Section 251(g) of the Telecommunications Act. Pursuant to Section 251(g).

> On or after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996 and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

According to Ameritech, because no court order, consent decree, regulation, order, or policy of the FCC provided for the payment of reciprocal compensation prior to February 7, 1996, reciprocal compensation cannot now apply. Ameritech states that reciprocal compensation could only apply if the FCC were to explicitly so require by regulation. Such an argument is circular, and escapes the logic of this opinion. Section 251(g) merely provides that local exchange carriers

must provide services with the same "equal access and non-discriminatory interconnection restrictions and obligations" as prior to the passage of the Telecommunications Act, until such restrictions or obligations are superseded. As this court has found that the FCC has no prior ruling that controls in the instant case, there is no ruling that could possibly be violated by ordering continued payments of reciprocal compensation by the plaintiff. Furthermore, as the defendants point out, Ameritech did indeed pay reciprocal compensation for local calls prior to the passage of the Act.

IV. CONCLUSION

For the reasons stated in this Memorandum Opinion and Order, this court affirms the Commission's determination that Local Exchange Carriers are entitled to reciprocal compensation under the Interconnection Agreements for Internet calls. The stay of the Commission's order is continued for an additional thirty-five (35) days to allow the parties to appeal.

Enter:

(Signed)
David H. Coar
United States District Judge

Dated: July 21, 1998.

APPENDIX H - ENTRY OF JUDGMENT BY THE DISTRICT COURT, AUGUST 4, 1998.

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge:
David H. Coar

CASE NUMBER: 98 C 1925 DATE: 8/4/1998

CASE TITLE: Illinois Bell v. Worldcom Technologies, et al

[Parts of form left blank omitted.]

(Other docket entry) Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court hereby directs entry of final judgment as to all defendants except Illinois Commerce Commission. This Court has currently pending motions to dismiss the Illinois Commerce Commission from this action. Because of the novelty and urgency of the issues presented on the merits of the action and because the Eleventh Amendment issues presented by the Commission's Motions to Dismiss were not related to the merits of the underlying claim, this Court directed the Commission to participate in briefing of the issue on the merits without prejudice to its rights to proceed on its Eleventh Amendment Motions. For the same reasons, this Court determines that there is no reason to delay the entry of final judgment on the merits.

[signed] David H. Coar

United States District Court
Northern District of Illinois
Eastern Division

Rule 54(b)

JUDGMENT IN A CIVIL CASE

Illinois Bell

v. Case Number: 98 C 1925

Worldcom Technologies, et al

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that this Court affirms the Commission's determination that Local Exchange Carriers are entitled to reciprocal compensation under the Interconnection Agreements for Internet calls. The stay of the Commission's order is continued to thirty-five days after (i) the entry of judgment in this case or (ii) the entry of an order of dismissal in this case, to allow the parties to appeal.

Judgment is hereby entered against the plaintiff Illinois Bell Telephone and in favor of the defendants Worldcom Technologies, Inc., as successor in interest to MFS Intelenet of Illinois, Inc.; Teleport Communications Group, Inc.; MCI Telecommunications Corporation; MCIMETRO Access Transmission Services, Inc.; AT&T Communications of Illinois, Inc. and Focal Communications Corporation.

Michael W. Dobbins, Clerk of Court

Date: 8/4/1998

Patricia McQurter-Figgs,
Deputy Clerk